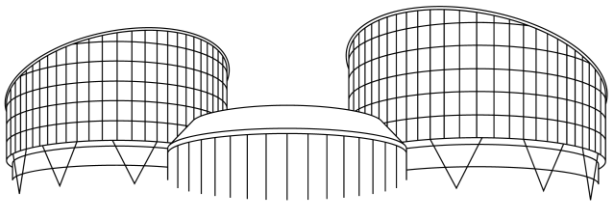

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF M.A. v. CYPRUS

(Application no. 41872/10)

JUDGMENT

STRASBOURG

23 July 2013

FINAL

23/10/2013

In the case of M.A. v. Cyprus,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Fatoş Araci, *Deputy Section Registrar,*

Having deliberated in private on 2 July 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 41872/10) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national of Kurdish origin, Mr M.A. ("the applicant"), on 14 June 2010.

2. The applicant, who had been granted legal aid, was represented by Ms N. Charalambidou, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicant alleged that his deportation to Syria would entail the risk of his being killed, in breach of Article 2 of the Convention, or of being subjected to treatment in breach of Article 3. In this respect he also complained of the lack of a remedy satisfying the requirements of Article 13 of the Convention. Further, the applicant complained under Article 5 §§ 1 (f), 2 and 4 of the Convention about his detention by the Cypriot authorities. Lastly, he claimed that his deportation would be in breach of Article 4 of Protocol No. 4.

4. On 14 June 2010 the President of the First Section decided to apply Rule 39 of the Rules of Court, indicating to the respondent Government that the applicant should not be deported to Syria. The application was granted priority on the same date (Rule 41). On 21 September 2010 the President of the First Section, following an examination of all the information received from the parties, decided to maintain the interim measure (see paragraph 58 below).

5. On 19 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. The measure indicated under Rule 39 was lifted in the course of the proceedings before the Court (see paragraphs 59-60 below).

7. On 25 August 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the present application was assigned to the newly composed Fourth Section.

8. On 30 November 2012 the President of the Section decided on her own motion to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, who is of Kurdish origin, was born in 1969 in north-west Syria and lives in Nicosia.

A. The applicant's asylum claim and all relevant proceedings

10. The applicant left Syria on 21 May 2005 and, after travelling to Turkey and then to the "Turkish Republic of Northern Cyprus" ("TRNC"), he entered Cyprus unlawfully.

11. He applied for asylum on 12 September 2005 and an interview was held on 21 June 2006 with the Asylum Service.

12. His application was dismissed by the Asylum Service on 21 July 2006 on the ground that the applicant did not fulfil the requirements of the Refugee Law of 2000-2005[1], namely, he had not shown a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group or political opinion or a well-founded fear of serious and unjustified harm for other reasons. The Asylum Service noted that there had been discrepancies in his account of the facts which undermined his credibility. In particular, there had been significant contradictions regarding his origins. It was also observed that the applicant had not been able to reply satisfactorily and with precision to certain questions or to give the information required in a persuasive manner. In conclusion, the Asylum Service found that the asylum application had not been substantiated.

13. On 1 August 2006 the applicant lodged an appeal with the Reviewing Authority for Refugees (hereafter "the Reviewing Authority")

[1] Refugee Law (Law no. 6(I)/2000 as amended up to 2005); see paragraph 74 below.

against the Asylum Service's decision. The appeal was dismissed on 1 February 2008.

14. The Reviewing Authority upheld the decision of the Asylum Service. In its decision it observed that the applicant's claims had not been credible and had been vague and unsubstantiated. The Reviewing Authority noted, *inter alia*, that although the applicant had stated in his interview with the Asylum Service that he had been arrested and detained for three days by the Syrian military security forces, that had been in 1992, thirteen years before he decided to leave the country. With the exception of this incident, he had confirmed that he had never been harassed by the Syrian authorities and had never been persecuted. Moreover, although the applicant claimed that he had stated in his interview with the Asylum Service that he had been subjected to electric shock treatment and the "wheel treatment" whilst in detention in Syria, it transpired from the minutes of that interview that he had in fact stated that the electric cables had not functioned and had not mentioned that the wheel had been used to torture him. The Asylum Service had therefore not considered it necessary to refer him for a medical examination. The Reviewing Authority also observed that the applicant had merely claimed that he had left Syria on account of the increased pressure on the Kurdish population in that country following the events in Qamishli in 2004 and his fear of being arrested in the future, and because of his political activities as a member of the Yekiti Party. His allegations, however, had been general and vague. Further, his written asylum application had been based on other grounds. In particular, in his application the applicant had stated that he had come to Cyprus in search of work and better living conditions.

15. Lastly, the Reviewing Authority pointed out that the applicant had been able to obtain a passport lawfully and to leave Syria. As regards the applicant's claims concerning his involvement with the Yekiti Party in Syria, it pointed out that the applicant's replies to questions put to him about the party were too general and vague.

16. In conclusion, the Reviewing Authority held that the applicant had not established that he was at risk of persecution and that if he returned to Syria his life would be in danger or he would be imprisoned.

17. On 1 September 2008, following a request by the Cyprus-Kurdish Friendship Association to the Minister of the Interior on 22 July 2008, the applicant's file was reopened by the Asylum Service in order to examine new information put forward by the applicant, mainly concerning his activities as the head of the Yekiti Party in Cyprus. The applicant was again interviewed by the Asylum Service on 16 February 2009.

18. According to the Government, on 8 June 2010 an officer of the Asylum Service expressed the opinion that the information submitted by the applicant could not be considered as new evidence forming the basis of a new claim. The Government submitted an internal note to this effect.

19. The applicant was arrested on 11 June 2010 and deportation and detention orders were issued against him on the same day (see paragraph 41 below).

20. On 7 July 2010 the Asylum Service sent the applicant's file to the Reviewing Authority following an opinion given by the Attorney-General that the relevant body which should examine the new evidence put forward by the applicant was the Reviewing Authority and not the Asylum Service.

21. On 20 August 2010 the Minister of the Interior cancelled the deportation and detention orders of 11 June 2010 and issued new ones against the applicant on other grounds (see paragraph 48 below).

22. On 30 September 2010 the Reviewing Authority informed the applicant that the information submitted before it could not alter in any manner its initial decision not to recognise him as a refugee within the meaning of Articles 3 and 19 of the Refugee Law of 2000-2009[2]. The applicant was served with the relevant letter on 6 October 2010. On the copy of the letter provided by the Government it is stated that the applicant was served with the letter on 6 October 2010 but refused to sign for it, requesting instead to see his lawyer.

23. On 8 October 2010 the applicant brought a "recourse" (judicial review proceedings) before the Supreme Court (first-instance revisional jurisdiction) under Article 146 of the Constitution challenging the decision of the Reviewing Authority of 30 September 2010.

24. Following advice from the Attorney-General, the Reviewing Authority decided to re-open the applicant's file in order to consider the content of his second interview at the Asylum Service on 16 February 2009 (see paragraph 17 above).

25. The applicant was informed by letter dated 8 April 2011 that the Reviewing Authority had decided to withdraw its previous decision (see paragraph 22 above) and to reopen and re-examine his claim taking into consideration the content of his second interview with the Asylum Service.

26. The applicant was called on by the Reviewing Authority to give another interview as an examination of the minutes of the applicant's interview at the Asylum Service showed that it had been inadequate. The applicant was interviewed by the Reviewing Authority on 26 April 2011.

27. On 29 April 2011 the Reviewing Authority decided to recognise the applicant as a refugee pursuant to the Refugee Law of 2000-2009 and the 1951 Geneva Convention relating to the Status of Refugees (hereafter "the 1951 Geneva Convention"). The relevant excerpt of the decision reads as follows:

> "During the interview the applicant was asked about his activities in Cyprus and in particular about his membership of the Cypriot-Kurdish Friendship Association as well as his activities in the Yekiti opposition Party in Cyprus. From his interview it

[2] Refugee Law (Law no. 6(I)/2000 as amended up to 2009); see paragraph 74 below.

was ascertained that the applicant is credible in so far as his feelings for the rights of the Kurds in Syria are concerned. Consequently, the applicant started to get involved in political matters and to publicly express his opinion about the bad state of affairs in Syria. In particular, the applicant has an active role in the Yekiti Party in Cyprus as he is its founder and organises and coordinates his compatriots in anti-regime demonstrations and demonstrations for the rights of Kurds.

Among the documents the applicant provided the Asylum Service with, there were photographs which show him organising, coordinating and leading the demonstrations that took place in the Republic of Cyprus. Consequently, his name has been connected with anti-regime demonstrations and with a negative stance towards the existing government of Syria. In addition, as an activist, the applicant is considered to be someone who causes problems for the Syrian authorities.

Following his interview on 26 April 2011, the applicant provided the Reviewing Authority with additional documents. These are:

1) Documents from the Kurdish Organisation for Human Rights in Austria which refer to the activity of the applicant in Cyprus and to photographs of him which were published in Cypriot newspapers and which have come to the attention of the Syrian authorities.

2) The organigram of the Yekiti Party in Cyprus, which shows that the applicant is the head of the party.

Lastly, following an inquiry, it was ascertained that the applicant had spoken about the problems faced by Kurds in the Republic and in Syria to local newspapers with pan-Cyprian circulation. More specifically, speaking as the representative of the Kurdish Yekiti Party in Cyprus the applicant had stated that Kurds did not have rights in Syria, as one of these rights was to speak one's own language, something which is prohibited [for Kurds] in Syria. In addition, the applicant expressed fears that upon his return he would be arrested as [the authorities] knew him.

The applicant has proved in a convincing manner that his fear of persecution and danger to his life in the event of his return to Syria is objectively credible. He is already stigmatised by the authorities of his country and according to the COI (country of origin information) a well-founded fear of persecution by the authorities in his country because of his political opposition activity has been substantiated. Upon examination it was ascertained that none of the exclusion clauses apply to the applicant's case and, as a result, he should be granted refugee status as provided for in Article 3 of the Refugee Law.

In view of all the above, it is evident that the real circumstances of the present application, [fulfil] the necessary conditions for the granting of refugee status provided for in section 3 of the Refugee Law 2000-2009 and the 1951 Geneva Convention.

The applicant has succeeded in showing a well-founded fear of persecution on the basis of political opinions and should therefore be granted refugee status.

On the basis of the above, it is decided that [the applicant] be granted refugee status."

28. Following the above decision, on 6 June 2011 the applicant withdrew his recourse with the Supreme Court (see paragraph 23 above).

B. The applicant's arrest and detention with a view to deportation

29. On 17 May 2010 the Yekiti Party and other Kurds from Syria organised a demonstration in Nicosia, near the Representation of the European Commission, the Ministry of Labour and Social Insurance and the Government Printing Office. They were protesting against the restrictive policies of the Cypriot Asylum Service in granting international protection. About 150 Kurds from Syria, including the applicant, remained in the area around the clock, having set up about eighty tents on the pavement. According to the Government, the encampment conditions were unsanitary and protesters were obstructing road and pedestrian traffic. The encampment had become a hazard to public health and created a public nuisance. The protesters performed their daily chores on the pavement, including cooking and washing in unsanitary conditions. The sewage pits had overflown, causing a nuisance and offensive odours. The public lavatories were dirty and the rubbish bins of the Government buildings were being used and, as a result, were continuously overflowing. Furthermore, the protesters were unlawfully obtaining electricity from the Printing Office. Members of the public who lived or worked in the area had complained to the authorities. The Government submitted that efforts had been made by the authorities to persuade the protesters to leave, but to no avail. As a result, the authorities had decided to take action to remove the protesters from the area.

30. On 28 May 2010 instructions were given by the Minister of the Interior to proceed with the deportation of Syrian-Kurdish failed asylum seekers in the normal way.

31. On 31 May 2010 the Minister requested the Chief of Police, among others, to take action in order to implement his instructions. Further, he endorsed suggestions made by the competent authorities that deportation and detention orders be issued against Syrian-Kurdish failed asylum seekers who had passports and did not have Ajanib or Maktoumeen status and that the police execute the orders starting with the ones issued against the leaders of the protesters. The police were also directed to take into account the policy guidelines and to use discreet methods of arrest.

32. According to the Government, letters were sent by the Civil Registry and Migration Department to a number of failed Syrian-Kurdish asylum-seekers informing them that they had to make arrangements to leave Cyprus in view of their asylum applications being turned down. The Government submitted copies of thirty such letters. In thirteen cases the letters were dated 1 June 2010 (in some the asylum decisions having been taken as far back as 2007) and in one case 9 June 2010 (the asylum decision procedure having been completed at the end of 2009). Two other letters were dated 16 June 2010 (the asylum procedures having been completed in early 2008) and 28 June 2010 (the asylum procedures having been completed in March

2010). Further, one letter was dated 5 February 2011 in a case where the asylum procedure had been completed on 22 April 2010 and the person in question had voluntarily agreed and did return to Syria on 24 September 2010.

33. From documents submitted by the Government it appears that from 31 May until 7 June 2010 the authorities kept the area under surveillance and kept a record of the protesters' daily activities and of all comings and goings. In the relevant records it is noted that invariably, between 1.30 a.m. and 5.30 a.m., things were, in general, quiet, and everyone was sleeping apart from those keeping guard. During the above-mentioned period a large-scale operation was organised by the Police Emergency Response Unit, "ERU" ("ΜΜΑΔ"), and a number of other authorities, including the Police Aliens and Immigration Unit, for the removal of the protesters and their transfer to the ERU headquarters for the purpose of ascertaining their status on a case-by-case basis.

34. In the meantime, between 28 May 2010 and 2 June 2010 orders for the detention and deportation of forty-five failed asylum seekers were issued following background checks. Letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, containing a short paragraph with information as to the immigration status of each person. This information included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service, the date of dismissal of the appeal by the Reviewing Authority, where lodged, and the date some of those concerned had been included on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring). The letters recommended the issuance of deportation and detention orders. The Government submitted copies of two such letters with information concerning thirteen people.

35. On 2 June 2010, letters were also prepared in English by the Civil Registry and Migration Department informing those concerned of the decision to detain and deport them. The Government submitted that, at the time, the authorities did not know whether those individuals were among the protesters.

36. The removal operation was carried out on 11 June 2010, between approximately 3 a.m. and 5 a.m. with the participation of about 250 officers from the Police Aliens and Immigration Unit, the ERU, the Nicosia District Police Division, the Traffic Division, the Fire Service and the Office for Combating Discrimination of the Cyprus Police Headquarters. The protesters, including the applicant, were led to buses, apparently without any reaction or resistance on their part. At 3.22 a.m. the mini buses carrying the male protesters left. The women, children and babies followed at 3.35 a.m. A total of 149 people were located at the place of protest and were transferred to the ERU headquarters: eighty-seven men, twenty-two women

and forty children. Upon arrival, registration took place and the status of each person was examined using computers which had been specially installed the day before. The Government submitted that during this period the protesters had not been handcuffed or put in cells but had been assembled in rooms and given food and drink. It appears from the documents submitted by the Government that by 6.40 a.m. the identification of approximately half of the group had been completed and that the whole operation had ended by 4.30 p.m.

37. It was ascertained that seventy-six of the adults, along with their thirty children, were in the Republic unlawfully. Their asylum applications had either been dismissed or their files closed for failure to attend interviews. Those who had appealed to the Reviewing Authority had had their appeals dismissed. Some final decisions dated back to 2006. A number of people had also been included on the authorities' "stop list". Deportation orders had already been issued for twenty-three of them (see paragraph 34 above).

38. The authorities deported twenty-two people on the same day at around 6.30 p.m. (nineteen adults and three children). Forty-four people (forty-two men and two women), including the applicant, were charged with the criminal offence of unlawful stay in the Republic under section 19(2) of the Aliens and Immigration Law (see paragraph 65 below). They were arrested and transferred to various detention centres in Cyprus. The applicant was placed in the immigration detention facilities in the Nicosia Central Prisons (Block 10). All those who were found to be legally resident in the Republic returned to their homes. Further, on humanitarian grounds, thirteen women whose husbands were detained pending deportation and who had a total of twenty-seven children between them were not arrested themselves.

39. According to the Government the applicant and his co-detainees were informed orally that they had been arrested and detained on the basis that they had been staying in the Republic unlawfully and were thus "prohibited immigrants" (see § 62 below). They were also informed of their rights pursuant to the Rights of Persons Arrested and Detained Law 2005 (Law no. 163(I)/of 2005) (see paragraph 93 below) and, in particular, of their right to contact by phone, in person and in private, a lawyer of their own choice. The applicant submitted that he had not been informed of the reasons for his arrest and detention on that date.

40. On the same day letters were sent by the District Aliens and Immigration Branch of the Nicosia Police to the Director of the Aliens and Immigration Service and the Ministry of Justice and Public Order, recommending the issuance of deportation and detention orders. The letters contained a short paragraph in respect of each person with information as to his or her immigration status. This included the date of rejection of the asylum application or the closure of the asylum file by the Asylum Service

and the date of dismissal of the appeal by the Reviewing Authority where lodged. Some letters also referred to the date the asylum application had been lodged and the date some of the individuals concerned had been included on the authorities' "stop list". The Government submitted copies of letters concerning thirty-seven people[3].

41. Deportation and detention orders were also issued in Greek on the same day in respect of the remaining fifty-three people detained (see paragraph 37 above), including the applicant, pursuant to section 14 (6) of the Aliens and Immigration Law on the ground that they were "prohibited immigrants" within the meaning of section 6(1)(k) of that Law. These were couched in identical terms. In respect of two people the orders also mentioned sections 6(1)(i) and 6(1)(l) of the Law.

42. Subsequently, on the same date, letters were prepared in English by the Civil Registry and Migration Department informing all the detainees individually, including the applicant, of the decision to detain and deport them. The Government submitted thirty-seven copies of these letters. The text of the letter addressed to the applicant reads as follows:

> "You are hereby informed that you are an illegal immigrant by virtue of paragraph (k). section 1, Article 6 of the Aliens and Immigration law, Chapter 105, as amended until 2009, because you of illegal entry [sic]
>
> Consequently your temporary residence permit/migration permit has been revoked and I have proceeded with the issue of deportation orders and detention orders dated 11th June 2010 against you.
>
> You have the right to be represented before me, or before any other Authority of the Republic and express possible objections against your deportation and seek the services of an interpreter."

43. The text of the remaining copies of the letters submitted by the Government was virtually identical, a standard template having been used. The only differences were that some letters referred to illegal stay rather than illegal entry and that the letters issued earlier referred to 2 June 2010 as the date of issuance of the deportation and detention orders (see paragraph 34 above).

44. On the copy of the letter to the applicant provided by the Government, there is a handwritten signed note by a police officer stating that the letter was served on the applicant on 18 June 2010 but that he refused to receive and sign for it. The other letters had a similar note or stamp on them with the same date, stating that the person concerned had refused to sign for and/or receive the letter. In a letter dated 7 September 2010 the Government stated that the applicant had been served on 18 June 2010. In their subsequent observations the Government submitted, however, that this was the second attempt to serve the letters, the first attempt having been made on 11 June 2010, that is, the day of the arrest.

[3] Most of these letters referred to groups of people.

45. The applicant submitted that he had never refused to receive any kind of information in writing. He claimed that it had only been on 14 June 2010 that he had been informed orally that he would be deported to Syria on the same day but that the deportation and detention orders were not served on him on that date or subsequently. He submitted that he had eventually been informed by his lawyer, following the receipt of information submitted by the Government to the Court in the context of the application of Rule 39 of the Rules of Court, that deportation and detention orders had been issued against him on 11 June 2010.

46. From the documents submitted by the Government, it appears that at least another fourteen of the detainees were to be deported on 14 June 2010[4].

47. In a letter dated 12 October 2010 the Government informed the Court that on 17 August 2010 the Minister of the Interior had declared the applicant an illegal immigrant on public order grounds under section 6(1)(g) of the Aliens and Immigration Law on the basis of information that he had been involved in activities relating to receiving money from prospective Kurdish immigrants in exchange for "securing" residence and work permits in Cyprus.

48. On 20 August 2010 the Minister of Interior issued deportation and detention orders based on the above-mentioned provision. The previous orders of 11 June 2010 were cancelled. The applicant submitted that he had not been notified of the new orders. The Government did not comment on the matter and did not submit a copy of a letter notifying the applicant of these orders.

49. The applicant was released from detention on 3 May 2011 following the decision to grant him refugee status (see paragraph 27 above).

C. Habeas corpus proceedings

50. On 24 January 2011 the applicant filed a habeas corpus application claiming that his continued detention from 11 June 2010 had violated Article 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Members states for returning illegally staying third-country nationals. The applicant, relying on the Court's judgment in *Chahal v. the United Kingdom*, 15 November 1996, (*Reports of Judgments and Decisions* 1996-V) and the Commission's report in *Samie Ali v. Switzerland* (no. 24881/94, Commission's report of 26 February 1997) also claimed that his detention had breached Article 11 (2) of the Constitution and Article 5 § 1 of the Convention.

[4] This figure is stated in documents submitted by the Government with no further details.

51. On 23 February 2011 the Supreme Court dismissed the application. With regard to the preliminary issues raised, the Supreme Court first of all held that it had the competence to examine the application as it was called upon to examine the lawfulness of the applicant's protracted detention and not the lawfulness of the deportation and detention orders. The court could, within the context of a habeas corpus application, examine the conformity of the applicant's detention with Article 15 (3) of the Directive and Article 11 (2) (f) of the Constitution. The applicant was not estopped from bringing a habeas corpus application due to the fact that he had not challenged the deportation and detention orders issued against him. Even if the lawfulness of the detention was assumed, detention for the purpose of deportation could not be indefinite and the detainee left without the right to seek his release. The Supreme Court also rejected the argument that the applicant was estopped from bringing the application because his continued detention had been brought about by his own actions, that is, by his application to the Strasbourg Court for an interim measure suspending his deportation.

52. The Supreme Court then examined the substance of the application. It noted that the Directive had direct effect in the domestic law, as the period for transposition had expired and the Directive had not been transposed. It could therefore be relied on in the proceedings. However, it went on to hold that the six-month period provided for in the Directive had not yet started to run. The applicant had been arrested on 11 June 2010 with a view to his deportation but had not been deported by the Government in view of the application by the Court on 12 June 2010 of Rule 39 and the issuing of an interim measure suspending his deportation. Consequently, the authorities had not been able to deport him. As the applicant himself had taken steps to suspend his deportation, the ensuing time could not be held against the Government and could not be taken into account for the purposes of Article 15 (5) and (6) of the Directive. The six-month period would start to run from the moment that the interim measure had been lifted. From that moment onwards the Government had been under an obligation in accordance with Article 15 (1) of the Directive to proceed with the applicant's deportation with due diligence. The situation would have been different if the deportation had not been effected owing to delays attributable to the authorities.

53. In so far as the applicant's complaints under Article 11 (2) of the Constitution and Article 5 § 1 of the Convention were concerned, the Supreme Court distinguished the applicant's situation from those in the cases he relied on and in which responsibility for the protracted detention lay with the authorities. Further, it held that it had not been shown that the continued detention of the applicant had been arbitrary, abusive and contrary to the Court's case-law (see paragraph 50 above).

54. The applicant lodged an appeal with the Supreme Court (appellate jurisdiction) on 17 March 2011.

55. The appeal was dismissed on 15 October 2012. The Supreme Court held that as the applicant had, in the meantime, been released, the application was without object.

D. Background information concerning the applicant's request under Rule 39 of the Rules of Court

56. On Saturday, 12 June 2010, the applicant, along with forty-three other persons of Kurdish origin, submitted a Rule 39 request[5] in order to prevent their imminent deportation to Syria.

57. On 14 June 2010 the President of the First Section decided to apply Rule 39, indicating to the respondent Government that the detainees should not be deported to Syria until the Court had had the opportunity to receive and examine all the documents pertaining to their claim. The parties were requested under Rule 54 § 2 (a) of the Rules of Court to submit information and documents concerning the asylum applications and the deportation.

58. On 21 September 2010 the President of the First Section reconsidered the application of Rule 39 in the light of information provided by the parties. He decided to maintain the interim measure in respect of five applications, including the present one. Rule 39 was lifted with regard to the thirty-nine remaining cases. In seven of these cases the deportation and detention orders were annulled by the authorities. It appears that in at least three out of the seven cases proceedings were still pending with the Asylum Service or the Reviewing Authority. Those applicants subsequently withdrew the applications they had lodged with the Court.

59. By a letter dated 11 May 2011, the applicant's representative informed the Court that the applicant, by a decision dated 26 April 2011, had been recognised as a refugee under the 1951 Geneva Convention and had been released on 3 May 2011.

60. On the basis of the above information, on 23 May 2011 the President of the First Section decided to lift the measure indicated under Rule 39.

[5] 37 of the persons concerned have applications pending before the Court. In two of these Rule 39 continues to be in force.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Entry, residence and deportation of aliens

1. The Aliens and Immigration Law and the Refugee Law

61. The entry, residence and deportation of aliens are regulated by the Aliens and Immigration Law of 1959 (Cap. 105, as amended).

62. Under section 6(1) of the Law a person is not permitted to enter the Republic if he is a "prohibited immigrant". This category includes any person who enters or resides in the country contrary to any prohibition, condition, restriction or limitation contained in the Law or in any permit granted or issued under the Law (section 6(1)(k)), any person who was deported from the Republic either on the basis of the Law or on the basis of any other legislation in force at the time of his or her deportation (section 6(1)(i)) and any alien who wishes to enter the Republic as an immigrant, but does not have in his or her possession an immigration permit granted in accordance with the relevant regulations (section 6(1)(l)). Furthermore, a person can be considered to be a "prohibited immigrant" on, *inter alia*, grounds of public order, legal order or public morals or if he or she constitutes a threat to peace (section 6(1)(g)).

63. Under the Law the deportation and, in the meantime, the detention of any alien who is considered "a prohibited immigrant" can be ordered by the Chief Immigration Officer, who is the Minister of the Interior (section 14). Section 14(6) provides that a person against whom a detention and/or deportation order has been issued shall be informed in writing, in a language which he understands, of the reasons for this decision, unless this is not desirable on public-security grounds, and has the right to be represented before the competent authorities and to request the services of an interpreter. In addition, Regulation 19 of the Aliens and Immigration Regulations of 1972 (as amended) provides that when the Immigration Officer decides that a person is a prohibited immigrant, written notice to that effect must be served on that person in accordance with the second schedule of the Regulations.

64. In the case of *Uros Stojicic* v. *the Republic of Cyprus, through the Immigration Officer (judgment of 27 June 2003, case no. 1018/2002)* the Supreme Court pointed out that, due to its seriousness, a deportation order was subject to restrictions and conditions of a substantive and formal nature, which aimed to safeguard the fundamental rights of persons against whom a deportation procedure was being carried out to information and a hearing. These safeguards are provided for in the domestic law, in particular, section 14(6) of the Aliens and Immigration Law and Regulation 19 of the Aliens and Immigration Regulations, as well as in Article 1 of Protocol No. 7 to the Convention. The Supreme Court observed that Cypriot

jurisprudence recognised the wide discretion of the Immigration Officer as an integral part of state sovereignty but at the same time imposed safety measures in order to prevent arbitrary acts by state organs and abuses which could lead to the infringement of fundamental and internationally safeguarded human rights.

The exception provided for in section 14(6), which is grounded on reasons of public security, will apply where the authorities consider it undesirable to inform the person concerned of the reasons for the decision to detain and deport him. For example, in *Kamran Sharajeel v. the Republic of Cyprus, through Minister of the Interior (judgment of 17 March 2006, case no. 725/2004*, the Supreme Court accepted the application of the exception as it was obvious from the correspondence in the file that the case had been treated as urgent by the authorities and that the grounds for the deportation concerned national security. The applicant in that case had been arrested on the basis of information that he was reportedly involved with Al-Qaeda and was deported within three days of his arrest.

65. Unauthorised entry and/or stay in Cyprus are criminal offences. Until November 2011, they were punishable by imprisonment or a fine (section 19(2)) of the Aliens and Immigration Law). Law 153(I)/2011, which entered into force in November 2011, removed the punishment of imprisonment but retained the criminal nature of the contraventions and their punishment with a fine (section 18). Such punishment is not applicable to asylum seekers. Furthermore, a person who has entered the Republic illegally will not be subject to punishment solely on the basis of his illegal entry or residence, provided that he appears without unjustified delay before the authorities and gives the reasons for his illegal entry or residence (Section 7(1) of the Refugee Law, Law 6 (I) of 2000, as amended).

66. Further, section 19 A (2) of the Aliens and Immigration Law provides, *inter alia*, that a person who intentionally and with the aim of obtaining profit assists a third country national to enter or pass through the Republic in breach of the Aliens and Immigration Law, commits a criminal offence which is punishable, following conviction, with imprisonment of up to eight years or with a fine, or both.

2. Challenging deportation and detention orders

67. Deportation and detention orders can be challenged before the Supreme Court by way of administrative recourse under Article 146 (1) of the Constitution of the Republic of Cyprus. This provision provides as follows:

> "The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person."

68. A recourse must be made within seventy-five days of the date when the decision or act was published or, if it was not published and in the case of an omission, when it came to the knowledge of the person making the recourse (Article 146 (3)). Should the recourse succeed, the power of the Supreme Court is confined to declaring an act or decision null or void, or, in the case of an omission, that it ought not to have occurred, in that what had not been done should have been done (Article 146 (4)).

The jurisdiction of the Supreme Court under Article 146 is limited to reviewing the legality of the act, decision or omission in question on the basis of the facts and circumstances existing at the time the act, decision or omission occurred. The Supreme Court will not go into the merits of the decision and substitute the decision of the administrative authority or organ concerned with its own decision; it will not decide the matter afresh. If the Supreme Court annuls the act or decision in question, the matter is automatically remitted to the appropriate administrative authority or organ for re-examination (see the domestic case-law citations in *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, § 73, 21 July 2011).

69. Article 146 (6) provides for compensation as follows:

> "Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant".

70. The Supreme Court has held that the lawfulness of deportation and detention orders can only be examined in the context of a recourse brought under Article 146 of the Constitution and not in the context of a habeas corpus application (see, for example, the Supreme Court's judgment of 30 December 2004 in *Elena Bondar* appeal no. 12166 against the refusal of an application for a writ of habeas corpus, (2004) 1 (C) CLR 2075).

71. A recourse does not have automatic suspensive effect under domestic law. In order to suspend deportation an application must be made seeking a provisional order. The Supreme Court has the power to issue provisional orders, suspending the enforcement of the decision taken by the administrative authority, pending the hearing of the case on the merits. A provisional order is an exceptional discretionary measure and is decided on a case-by-case basis (rule 13 of the Supreme Constitutional Court Rules 1962). The Supreme Court will grant a provisional order if an applicant establishes that the contested decision is tainted by flagrant illegality or that he or she will suffer irreparable damage from its enforcement (see amongst a number of authorities, *Stavros Loizides v. the Ministry of Foreign* Affairs (1995) 3 C.L.R. 233; *Elpida Krokidou and*

others v. the Republic, (1990) 3C C.L.R. 1857; and *Sydney Alfred Moyo & another v. the Republic (1988) 3 CLR 1203*).

72. Until recently, domestic law did not provide for legal aid in respect of a recourse under Article 146 of the Constitution against deportation and detention orders. In 2012 the Legal Aid Law (Law no. 165(I)/2002) was amended, enabling illegally staying third-country nationals to apply for legal aid (section 6C, Amending Law no. 8(I)/2012). However, legal aid is limited to first-instance proceedings and will be granted only if the recourse is deemed to have a reasonable chance of success (sections 6 C (2)(aa) and (bb)).

B. Asylum

73. The Cypriot Government assumed responsibility for assessing asylum claims from 1 January 2002. An Asylum Service was established for this purpose in the Migration Department of the Ministry of Interior. Prior to that, the UNHCR dealt with such claims.

74. Asylum seekers can appeal against decisions by the Asylum Service to the Reviewing Authority, which was established by the Refugee Law (Law 6 (I) of 2000, as amended). Procedures before the Asylum Service and the Reviewing Authority are suspensive: asylum seekers have a right under section 8 of the Refugee Law to remain in the Republic pending the examination of their claim and, if lodged, their appeal. Although the authorities retain the power to issue deportation and detention orders against an applicant during this period, such orders can only be issued on grounds which are unrelated to the asylum application, for example, the commission of a criminal offence, and they are subject to the suspensive effect (see the Supreme Court's judgment of 30 December 2004 in the case of *Asad Mohammed Rahal v the Republic of Cyprus* (2004) 3 CLR 741).

75. The decision of the Reviewing Authority can be challenged before the Supreme Court by way of administrative recourse under Article 146 (1) of the Constitution (see paragraphs 67-70 above). According to section 8 of the Refugee Law, however, following the decision of the Reviewing Authority, an applicant has no longer the right to remain in the Republic. A recourse does not have automatic suspensive effect (see paragraph 71 above).

76. Finally, section 6B of the Legal Aid Law (Law no. 165(I)/2002 as amended by Amending Law 132(I)/2009), provides that asylum-seekers may apply for legal aid in respect of a recourse brought under Article 146 of the Constitution against decisions by the Asylum Service and the Reviewing Authority. As in the case of deportation and detention (see paragraph 72 above), legal aid will only be granted in respect of the first-instance proceedings (section 6 B (2)(aa)) and if there is a prospect of success (section 6B(2)(bb)).

C. Cases relied on by the parties regarding "suspensiveness" and "speediness" in deportation and detention cases

1. Cases relied on by the Government

77. Recourses nos. 382/2011 (*Kazemyan Marvi Behjat* v. *the Republic of Cyprus –Director of the Civil Registry and Migration Department and the District Office of Kyrenia*), 383/2011 (*Embrahimzadeh Poustchi Omid* v. *the Republic of Cyprus –Director of the Civil Registry and Migration Department and the District Office of Kyrenia*) and 384/2011 (*Bagher Embrahim Zadeh* v. *the Republic of Cyprus –Director of the Civil Registry and Migration Department and the District Office of Kyrenia*) against deportation and detention orders were lodged before the Supreme Court on 21 March 2011 by a couple and their son. An *ex parte* application for a provisional order was filed the next day. The hearing of the application took place on 20 April 2011. On that day the complainants agreed to an early hearing of the recourse and withdrew their application as part of an agreement with the Government to have their deportation suspended and have an early hearing of the main proceedings. The cases were then listed for a directions hearing to be held on 2 May 2001. The recourses were eventually withdrawn on 10 June 2011. They lasted two months and twenty days. The complainants were detained throughout this period, until their deportation on 17 July 2011.

78. Recourse no. 601/11 (*Olha Voroniuk v. Minister of the Interior and Director of the Civil Registry and Migration Department*) against deportation and detention orders was lodged on 11 May 2011 along with an application for a provisional order. The application was heard on 1 June 2011 when it was withdrawn after an agreement was reached with the Government. The case was then listed for a clarifications hearing to be held on 29 June 2011. The complainant, however, withdrew the recourse on 28 June 2011 in order to return to her country. The proceedings lasted one month and seventeen days. The complainant was detained throughout this period, until her deportation on 8 July 2011.

79. In recourse no. 439/2009 (*Sima Avani and Maral Mehrabi Pari v. the Republic of Cyprus – 1. Minister of the Interior and Director of the Civil Registry and Migration Department and 2. the Reviewing Authority for Refugees*) lodged on 16 April 2009, it appears that the complainants challenged both the Reviewing Authority's decision and the deportation and detention orders. They also filed an application for a provisional order. Rule 39 was applied by the Court. On 16 April 2009 the Supreme Court granted the provisional order, suspending the complainants' deportation. It then gave judgment dismissing the recourse on 27 August 2009, upholding the asylum decision taken by the authorities. The proceedings lasted for four months and eleven days. The complainants were detained throughout this period. They were released on 1 September 2009 and were not detained

during the appeal proceedings, which were concluded on 10 October 2011 (Revisional appeal no. 150/09).

2. Cases relied on by the applicant

80. In recourse no. 493/2010 (*Leonie Marlyse Yombia Ngassam v. the Republic of Cyprus - the General Director of the Ministry of the Interior and the Attorney-General of the Republic*) against deportation and detention orders, an application for a provisional order was filed on 21 April 2010. The application was withdrawn following an agreement with the Government. Judgment was given on 20 August 2010. The proceedings therefore lasted three months and twenty-nine days, for the duration of which the complainant remained in detention.

81. In recourse no. 103/2012 (*Amr Mahmoud Youssef Mohammed Gaafar* v. *the Republic of Cyprus - Director of the Civil Registry and Migration Department and the Minister of the Interior*) the application for a provisional order was filed on 24 January 2012. It was subsequently withdrawn and the Supreme Court gave judgment on 23 July 2012. The proceedings lasted five months and twenty-nine days. The complainant was detained during this period.

82. In recourse no. 1724/2011 (*Mustafa Haghilo* v. *the Republic of Cyprus – the General Director of the Ministry of the Interior and the Attorney-General*) against deportation and detention orders, the application for a provisional order was filed on 28 December 2011. The application was subsequently withdrawn and judgment was given on 13 July 2012. The proceedings lasted six months and fifteen days. At the time of the submission of the applicant's observations of 31 July 2012 the appeal proceedings were still pending and the complainant was still in detention.

83. Recourse no. 1723/2011 (*Mohammad Khosh Soruor v. the Republic of Cyprus – the General Director of the Ministry of the Interior and the Attorney-General*) against deportation and detention orders was lodged on 28 December 2011 along with an application for a provisional measure. The application was not withdrawn but was dismissed by the Supreme Court on 8 February 2012. At the time of the submission of the applicant's observations of 31 July 2012 the main proceedings in this recourse were still pending and had up to that date lasted six months and twenty-two days. The complainant was still in detention.

84. In recourse no. 1117/2010 (*Shahin Haisan Fawzy Mohammed v. the Republic of Cyprus – the General Director of the Ministry of the Interior and the Attorney-General)* the Supreme Court gave judgment on 23 December 2010, annulling deportation and detention orders issued against the complainant. Following this judgment the authorities issued new deportation and detention orders. A recourse challenging these orders along with an application for a provisional order to suspend deportation were filed on 30 December 2010 (recourse no. 1718/10; *Shahin Haisan Fawzy*

Mohammed v. the Republic of Cyprus – the General Director of the Ministry of the Interior and the Attorney-General). According to the minutes of the proceedings the authorities were notified of the application on 31 December 2010. On 4 January 2011, at the hearing of the application, however, the authorities informed the Court that the complainant had been deported on 2 January 2011. His representative withdrew the application but maintained the recourse. At the time, the complainant's recourse against the Reviewing Authority's decision was still pending before the Supreme Court (recourse no. 1409/2010).

D. Detention pending deportation

85. At the material time, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, "the EU Returns Directive", had not been transposed into Cypriot domestic law. As the deadline for transposition expired on 24 December 2010 (see Article 20 of the Directive) the Directive had direct effect in domestic law and could therefore be relied on by an individual in court (see for example the Supreme Court judgments of 18 January 2011 in the case of *Shanmukan Uthajenthiran*, habeas corpus application no. 152/2010 and of 20 January 2011, and the case of *Irfam Ahmad*, habeas corpus application 5/2011).

86. In accordance with Article 15 §§ 5 and 6 of the Directive, detention may be maintained as long as the conditions laid down in subsection 6 are in place, but not longer than six months. Exceptionally, if a deportee refuses to cooperate with the authorities, or there are delays in the obtaining of the necessary travel documents, or the deportee represents a national security or public order risk, detention may be prolonged for a further twelve months, to a maximum of eighteen months (see paragraph 98 below). The Directive has been invoked before the Supreme Court in habeas corpus proceedings in which detainees challenged the lawfulness of their protracted detention for the purpose of deportation (see, for example, Supreme Court judgments of 12 March 2012 in the case of *Yuxian Wing*, habeas corpus application no. 13/2012; of 8 January 2011 in *the case of Shanmukan Uthajenthiran*, cited above; and of 22 December 2011 in the case of *Mostafa Haghilo*, habeas corpus application no. 133/2011).

87. In November 2011, Law no. 153(I)/2011 introduced amendments to the Aliens and Immigration Law with the aim of transposing the "EU Returns Directive". This Law expressly provides that habeas corpus applications before the Supreme Court challenging the lawfulness of detention with a view to deportation can be made on length grounds (for the previous situation, see *Kane v. Cyprus* (dec.), no. 33655/06, 13 September 2011)).

E. Relevant Constitutional provisions

88. Part II of the Constitution contains provisions safeguarding fundamental human rights and liberties. Article 11 protects the right to liberty and security. It reads as follows, in so far as relevant:

Article 11

"1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law:

...

(f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law.

4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and shall be allowed to have the services of a lawyer of his own choosing.

..

7. Every person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

8. Every person who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation".

F. Other relevant domestic law

1. The Police Law

89. Section 24(2) of the Police Law 2004 (Law no. 73(I)/2004) concerns the general powers and duties of members of the police. It reads as follows:

"It is the duty of every member of the police readily to obey and execute all the orders and warrants which are lawfully issued to him by any competent authority, to collect and transmit information which affects public peace and the security of the Cyprus Republic, to prevent the commission of offences and public nuisance, to discover and bring transgressors to justice and to arrest all persons who he is lawfully authorised to arrest, for the arrest of whom there is a satisfactory ground."

90. Section 29(1)(c) and (d) of the Police Law concerns the duty of the police to keep order on public roads. Its reads as follows:

"(1) It is the duty of every member of the police:

...

(c) to maintain order on public roads, streets, crossings, in airports and places of disembarkation and in other places of public recreation or places to which the public has access and

(d) to regulate movement and the maintenance of order in cases of obstructions on public roads and streets or in other places of public recreation or places to which the public has access."

2. The Public Roads Law and the Prevention of Pollution of Public Roads and Places Law

91. Section 3 of the Public Roads Law (Cap. 83 as amended) provides, *inter alia*, that it is a criminal offence punishable by imprisonment to place any rubbish or any other matter or thing whatsoever on any public road, or allow any filth, refuse, offensive matter or thing whatsoever to flow or run into or onto it, or intentionally obstruct the free passage of the road (section 3).

92. Section 3(1) of the Prevention of Pollution of Public Roads and Places Law of 1992 (Law no. 19(I)/92 as amended) provides, *inter alia*, that it is a criminal offence punishable by imprisonment to put, throw, leave, or tolerate or allow the throwing or leaving of, any refuse, waste or filth on a public road or in another public place.

3. The Law on the Rights of Persons who are Arrested and Detained

93. The Law on the Rights of Persons who are Arrested and Detained (Law no. 163(I)/2005) introduced a number of provisions regulating the rights and treatment of arrestees held in custody. It provides, *inter alia*, for the right of a person who is arrested by the police to a private telephone call to a lawyer of his or her choice immediately after his or her arrest (section 3(1)(a)).

III. INTERNATIONAL TEXTS AND DOCUMENTS

A. Relevant Council of Europe documents

1. Guidelines of the Committee of Ministers of the Council of Europe

94. Guideline X of the Guidelines on human rights protection in the context of accelerated asylum procedures adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies provides for the right to effective and suspensive remedies. It reads as follows:

"1. Asylum seekers whose applications are rejected shall have the right to have the decision reviewed by a means constituting an effective remedy.

2. Where asylum seekers submit an arguable claim that the execution of a removal decision could lead to a real risk of persecution or the death penalty, torture or

inhuman or degrading treatment or punishment, the remedy against the removal decision shall have suspensive effect."

2. The Commissioner for Human Rights

95. The Commissioner for Human Rights issued a recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders (CommDH(2001)19). This recommendation of 19 September 2001 included the following paragraph:

"11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a refoulement or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged."

3. ECRI reports on Cyprus

96. The European Commission against Racism and Intolerance (ECRI) published its third report on Cyprus on 16 December 2005. The relevant parts read as follows:

"56. ECRI is also concerned that deportations of asylum seekers have sometimes been carried out in a way that jeopardises respect of the principle of non-refoulement. It has been reported to ECRI that deportations are effectively carried out before the individual has been given a chance to even formally apply for asylum. However, deportations have also been carried out after an asylum application has been filed and before the completion of its examination. This has reportedly included cases where the files were arbitrarily closed or the asylum seeker was forced to withdraw the application, but also cases where the asylum claim was still pending in the first or second instance. Furthermore, since filing an appeal for judicial review before the Supreme Court does not have a suspensive effect on the deportation order, deportations of asylum seekers who file such an appeal are reportedly carried out as a rule before its examination is completed.

...

61. ECRI urges the Cypriot authorities to ensure that the asylum seekers' right to protection from *refoulement* is thoroughly respected. In this respect, it recommends that the Cypriot authorities ensure that deportations are not carried out before asylum procedures at all instances are completed."

97. In its subsequent periodic report (fourth monitoring cycle) on Cyprus, published on 31 May 2011, ECRI stated as follows:

"*Asylum seekers and refugees*

172. In its third report, ECRI made a large number of recommendations related to asylum seekers, namely that the authorities (i) ensure that adequate human and financial resources are available to deal effectively and within a reasonable time with all asylum applications; (ii) ensure that asylum seekers only be detained when it is absolutely necessary and that measures alternative to detention be used in all other

cases; (iii) take urgent measures to ensure that the right of persons to apply for asylum is thoroughly respected; (iv) ensure that clear information on the rights of asylum seekers and the procedures to apply for asylum is available in a language that asylum seekers understand at police stations and at all places where they may apply for asylum; (v) increase training of the police in human rights, including asylum and non-discrimination issues; (vi) ensure that any alleged instance of ill treatment of asylum seekers by police officers is thoroughly and rapidly investigated and that the persons found responsible are duly punished; (vii) take measures to improve asylum seekers' access to free or inexpensive legal aid and representation; (viii) take urgent measures to ensure that asylum seekers can access in practice all rights to which they are entitled by law, including in such areas as healthcare provision, welfare services, education and employment; (ix) ensure that asylum seekers are not discriminated against in exercising the right to employment granted to them by law, underlining that any measures taken by the Cypriot authorities with respect to asylum seekers' access to employment and welfare benefits should not push these persons towards illegality; (x) ensure that the asylum seekers' right to protection from refoulement is thoroughly respected and that deportations are not carried out before asylum procedures at all instances are completed; (xi) refrain from adopting deterrent policies in the field of asylum and from presenting any asylum policies to the public as deterrent policies.

173. ECRI notes that relatively little has changed in respect of the numerous concerns raised in its third report. Some of the above issues have already been addressed in other parts of this report. Below are some additional observations relating to asylum seekers.

...

183. As for legal aid, this is not available in administrative proceedings. ECRI notes that the first two instances in the asylum procedure, before the Asylum Service and the Refugee Reviewing Authority, are both administrative proceedings. The authorities have stated that according to the Refugee Law, an applicant has the right to have a lawyer or legal advisor at his/her own cost during all stages of the asylum procedure and that asylum seekers have access to free legal aid through the programmes funded by the European Refugee Fund and the Republic of Cyprus. In reality, however, few asylum seekers have the financial resources to engage private lawyers and there are only two NGOs functioning in the country with an interest in assisting asylum seekers.

...

185. A person whose asylum application is rejected at second instance may appeal to the Supreme Court for judicial review. The recent Law 132(I)/2009 amended the Legal Aid Law of 2002, in accordance with the EU Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, to extend eligibility for free legal aid, including advice, help and representation, to asylum seekers and refugees in appeals before the Supreme Court. ECRI notes that applications for legal aid are subject to a means and merits test: asylum seekers must demonstrate that they lack sufficient financial resources and that the appeal is likely to succeed.

186. International and civil society organisations have reported major difficulties in the application of the new legislation. Firstly, no information has been provided to asylum seekers of the new legal aid possibility. Secondly, since most asylum seekers do not have sufficient command of the Greek language, it is almost impossible for

them to formulate a successful legal aid application, particularly as regards the merits test. Thirdly, it is reported that as soon as a negative second instance decision is taken, a deportation order is faxed to the police and rejected asylum seekers are frequently arrested before they even receive the letter informing them of the negative decision of the Refugee Reviewing Authority or have a chance to appeal to the Supreme Court. Filing an appeal in any case does not have a suspensive effect on the deportation order. This raises questions concerning respect of the principle of non-refoulement. The authorities, however, have assured ECRI that the Asylum Service takes all necessary measures to ensure that the principle of non-refoulement is fully respected and that no deportation takes place before the examination of an asylum case is completed. Lastly, if legal aid is granted there is no list of lawyers specialising in asylum for asylum seekers to choose from.

187. ECRI understands that only two asylum seekers have been granted legal aid since the adoption of the amendment in December 2009 and around 100 have represented themselves before the Supreme Court without legal aid. Moreover, very few decisions have been made by the Supreme Court to send a case back to the Refugee Reviewing Authority.

188. ECRI recommends that the authorities ensure that asylum seekers have access to appropriate legal aid throughout the asylum application procedure and not just at the appeal stage.

189. ECRI recommends that the authorities ensure that asylum seekers are fully aware of the availability of legal aid to challenge negative asylum decisions before the Supreme Court.

195. As administrative decisions, detention and deportation can be appealed at the Supreme Court. However, as observed in ECRI's third report, an appeal has no suspensive effect, unless an interim injunction is granted by the Supreme Court."

B. Relevant European Union Law

98. Article 15 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals stipulates that:

"1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings."

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries."

99. Article 18 (2) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status provides that where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

C. Amnesty International reports

1. Report concerning the detention of migrants and asylum-seekers in Cyprus

100. In June 2012 Amnesty International published a report on the detention of migrants and asylum-seekers in Cyprus entitled "Punishment without a crime".

101. In the report Amnesty International, noted, *inter alia*, that it had been made aware of asylum-seekers whose claims had been rejected at the initial stage and at appeal level, and who had subsequently been apprehended and kept in detention pending deportation even though they were awaiting a decision by the Supreme Court on their challenges against the rejection of their asylum applications. This was because although an application to the Supreme Court did not automatically suspend the deportation process, an application to suspend the deportation, including as an interim measure, had to be lodged with the Supreme Court. The suspension was not granted automatically; an applicant had to establish flagrant illegality or irreparable damage. This therefore meant that in Cyprus asylum-seekers might be at risk of forcible return to a place where they were at serious risk of human rights violations (breaching the principle of *non-refoulement*) before their claim was finally determined unless the Supreme Court agreed to suspend the deportation order or, in cases where the asylum -seekers had petitioned the Court, an interim measure had been granted.

102. As regards the safeguards against unlawful detention, Amnesty International pointed out that it had documented several cases attesting to a failure by the police authorities to explain to immigration detainees the reasons for their detention, its possible length and the rights they had whilst in detention. Detainees and their lawyers had told Amnesty International that often they were not provided with the reasons and justification for detention. Usually, detainees were given a short letter simply referring to the legislative provisions under which their detention had been ordered and to the fact that they were being detained pending deportation. In some cases, deportation and detention orders had been handed to the individuals concerned several months into their detention. The report noted that such shortcomings were particularly common in relation to detained asylum-seekers. A large number interviewed by Amnesty International, particularly those whose applications were pending, did not appear to know how long they would be detained, even when they were aware of the grounds for their detention.

103. Furthermore, referring to the remedies available in Cyprus against detention, the report observed that according to lawyers, the average length of a recourse under Article 146 of the Constitution was one and a half years, whereas in a habeas corpus application it was one or two months. In the case of an appeal against an unsuccessful application, the length of the

appeal proceedings in both cases was about five years on average. In addition, according to domestic legislation, the Minister of Interior reviewed immigration detention orders either on his or her own initiative every two months, or at a reasonable time following an application by the detainee. The Minister was also solely responsible for any decision to prolong detention for an additional maximum period of twelve months. However, the lack of automatic judicial review of the decision to detain was a cause of major concern. Referring to Article 5 § 4 of the Convention, Article 18 (2) of the Asylum Procedures Directive and Article 15 (2) of the EU Returns Directive the report concluded that because of the lack of an automatic judicial review of the administrative orders to detain, especially in cases of prolonged detention, it was clear that the procedural safeguards in Cypriot law fell short of international and regional standards.

104. The report concluded that the routine detention of irregular migrants and of a large number of asylum-seekers was in clear violation of Cyprus' human rights obligations. It considered that this pattern of abuse was partly due to inadequate legislation, but more often it was down to the practice of the authorities. Lastly, the report set out a number of recommendations to the Cypriot authorities. These include, in so far as relevant:

- Ending the detention of asylum-seekers for immigration purposes in law and in practice, in line with international human rights standards which require that such detention is only used in exceptional circumstances;

- Ensuring that the recourse to the Supreme Court regarding a decision rejecting an asylum application at the initial stage or at appeal level automatically suspends the implementation of a deportation order;

- Ensuring that the decision to detain is automatically reviewed by a judicial body periodically on the basis of clear legislative criteria;

- Ensuring that migrants and asylum-seekers deprived of their liberty are promptly informed in a language they understand, in writing, of the reasons for their detention, of the available appeal mechanisms and of the regulations of the detention facility. The decision to detain must entail reasoned grounds with reference to law and fact;

- Ensuring that detention was always for the shortest possible time;

- Ensuring that the maximum duration for detention provided in law is reasonable;

- Ensuring that migrants and asylum-seekers were granted effective access to remedies against administrative deportation and detention orders, including through the assistance of free legal aid to challenge detention and/or deportation and adequate interpretation where necessary;

- Ensuring that deportation procedures contain adequate procedural safeguards, including the ability to challenge individually the decision to deport, access to competent interpretation services and legal counsel, and access to appeal before a judge.

2. Annual report of 2011

105. The chapter on Cyprus in the Amnesty International 2011 annual report refers, *inter alia*, to the events of June 2010. In so far as relevant, it states as follows:

> "In late May, around 250 Syrian Kurd protesters camped outside the "EU House" in Nicosia to protest against the authorities' rejection of their asylum claims and to protest about residence rights. On 11 June, 143 of the protesters, including children, were reportedly arrested during an early morning police operation. Several of them were released immediately but, according to reports, 23 were forcibly removed to Syria that day. On 14 June, the European Court of Human Rights issued interim measures requesting that Cyprus suspend the removal of the 44 who were still in detention. Seven of these were then released, either because they had pending asylum applications or were stateless. According to reports, of those remaining, 32 were forcibly removed to Syria after the European Court lifted the interim measures in their cases in September. The remaining five continued to be detained in Cyprus. Seventeen of those forcibly removed were reportedly arrested and detained upon or after their arrival in Syria."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

106. Relying on Articles 2 and 3 of the Convention, the applicant complained that if deported to Syria, he would be exposed to a real risk of death or torture or inhuman or degrading treatment. These provisions read as follows:

Article 2

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> ..."

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

107. The Government submitted that the applicant could no longer claim to be a victim of the alleged violation of Articles 2 and 3 of the Convention as he had been granted refugee status on 29 April 2011 and would therefore not be deported. Accordingly, they invited the Court to declare the applicant's complaints under these provisions inadmissible on this ground. In the alternative, the Government argued that the applicant had failed to exhaust domestic remedies. They noted in this respect that the applicant had not, in the course of his recourse before the Supreme Court, filed an application seeking a provisional order to suspend his deportation. Further, he had not brought a recourse against the deportation and detention orders issued against him.

108. The applicant accepted that he no longer faced a risk of deportation to Syria and the question of violation of Articles 2 and 3 of the Convention taken alone was not as such in issue anymore. He submitted that his recognition as a refugee was in substance an acknowledgment by the Government that his deportation to Syria would have been in violation of these provisions. He stressed, however, that if it had not been for the application of Rule 39 of the Rules of Court by the Court he would have been deported by the authorities. In reply to the Government's plea of non-exhaustion he maintained that he did not have an effective domestic remedy at his disposal as required by Article 35 § 1 of the Convention. In this respect, the applicant pointed out, *inter alia*, that a recourse against a decision by the Reviewing Authority or against deportation and detention orders did not have automatic suspensive effect. Neither did an application for a provisional measure to suspend deportation made in the context of such proceedings. Lastly, the applicant argued that the scope of the recourse proceedings before the Supreme Court was too limited, as it did not entail an examination of the merits of the administrative decisions concerning asylum and deportation.

B. The Court's assessment

1. Victim status

109. The Court reiterates that, as a general rule, a decision or measure favourable to the applicant is not sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, amongst many other authorities, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012; *I.M. v. France*, no. 9152/09, §§ 94-95, 2 February 2012; and *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 56, ECHR 2007-II).

110. The Court notes that in the present case the applicant, on 29 April 2011, was granted refugee status. The President of the First Section decided to discontinue the application of Rule 39 on this basis. As the applicant is no longer at risk of deportation to Syria, he can no longer claim to be a victim of a violation of his rights under Articles 2 and 3 of the Convention within the meaning of Article 34 of the Convention. It follows that this part of the application must be rejected as being incompatible *ratione personae* with the Convention, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. Exhaustion of domestic remedies

111. In view of the above conclusion, the Court does not need to examine the question of exhaustion of domestic remedies raised by the Government.

II. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

112. Relying on Article 13 of the Convention, the applicant complained of the lack of an effective domestic remedy with regard to his complaints under Articles 2 and 3. In particular, he complained that a recourse challenging the decisions of the Reviewing Authority and the deportation and detention orders did not have automatic suspensive effect and did not entail an examination of the merits of the administrative decisions. Article 13 provides as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. The parties' submissions

113. Despite the fact that he had been granted refugee status, the applicant considered that the Court should still proceed to examine his complaint under Article 13 of the Convention taken together with Articles 2 and 3. He submitted that he had had an arguable claim under the latter provisions. The authorities' decision to grant him refugee status confirmed this. He argued that he could still continue to claim to be a victim of a violation of Article 13 as he never had an effective domestic remedy at his disposal for the violation of his Convention rights. The applicant

emphasised that he had not been removed to Syria only because of the interim measure indicated by the Court to the Cypriot Government.

114. The Government did not make any specific submissions on this matter.

2. The Court's assessment

115. Although the respondent State did not raise any objection as to the Court's competence *ratione personae*, this issue calls for consideration *proprio motu* by the Court.

116. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce - and hence to allege non-compliance with - the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. However, Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

117. The Court has refrained from giving an abstract definition of the notion of arguability, preferring in each case to determine, in the light of the particular facts and the nature of the legal issue or issues raised, whether a claim of a violation forming the basis of a complaint under Article 13 is arguable and, if so, whether the requirements of this provision were met in relation thereto. In making its assessment the Court will also give consideration to its findings on the admissibility of the substantive claim (see *Ivan Atanasov v. Bulgaria*, no. 12853/03, §§ 100-101, 2 December 2010, and *Boyle and Rice*, cited above, § 54). The fact, however, that a substantive claim is declared inadmissible does not necessarily exclude the operation of Article 13 (see *I. M.* and *Gebremedhin*, and, *mutatis mutandis*, *Boyle and Rice*, §§ 54-55; all cited above).

118. More specifically, and of relevance to the present case, in deportation cases the Court has taken the view that loss of victim status in respect of alleged violations of Articles 2 and 3 of the Convention because an applicant was no longer exposed to the threat of deportation did not necessarily render that complaint non-arguable or deprive an applicant of his victim status for the purposes of Article 13. For example, in both the cases of *I.M.* and *Gebremedhin* (cited above), although the Court ruled that the applicants could no longer be considered as victims in respect of the alleged violation of Article 3, it found that the main complaint raised an issue of substance and that, in the particular circumstances, the applicants were still victims of the alleged violation of Article 13 taken together with Article 3. The same approach was taken recently by the Court in the case of *De Souza Ribeiro* in relation to a deportation complaint under Articles 8

and 13 (*De Souza Ribeiro v. France* [GC], no. 22689/07, §§ 84-100, 13 December 2012, read together with *De Souza Ribeiro v. France*, no. 22689/07, §§ 22-26, 30 June 2011).

119. In the present case, having examined the case file, the Court considers that the applicant's complaints under Articles 2 and 3 did raise a serious question as to the compatibility of his intended deportation in June 2010 with those provisions. It therefore finds that he can rely on Article 13. The Court observes in this respect that the Reviewing Authority in its decision granting the applicant refugee status held that the applicant had proved, in a convincing manner, that his fear of persecution and the danger to his life in the event of his return to Syria was objectively credible because of his political activity in Cyprus (see, *mutatis mutandis*, *S.F. and Others v. Sweden*, no. 52077/10, §§ 68-71, 15 May 2012 on the relevance of *sur place* activity in the receiving country).

120. In the circumstances, it cannot be said that the applicant can no longer claim to be a victim of the alleged violation of Article 13 taken in conjunction with Articles 2 and 3.

Firstly, as in the cases of *I.M.* and *Gebremedhin* (both cited above), the facts constituting the alleged violation had already materialised by the time the risk of the applicant's deportation had ceased to exist. The applicant's complaint is that when he was under threat of deportation there was no effective domestic remedy in respect of his complaints under Articles 2 and 3. The Court notes in this regard that at the time the applicant was to be sent back to Syria, his asylum application was being re-examined by the authorities and that it appears from the file that his deportation was halted only because of the application by the Court of Rule 39. The decision granting the applicant refugee status was taken more than ten months after he lodged his complaints before this Court. Secondly, although the authorities' decision to grant the applicant asylum has removed the risk that he will be deported, that decision does not acknowledge and redress his claim under Article 13 in conjunction with Articles 2 and 3 about the effectiveness of judicial review proceedings (see paragraphs 109-110 above). It cannot therefore deprive him of his status as a "victim" in respect of his complaint under this head.

121. In the light of the foregoing and given that this complaint is not inadmissible on any other grounds, it must be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

122. The applicant claimed that there was no effective remedy in relation to his complaints under Articles 2 and 3 of the Convention as

required by Article 13. Referring to the Court's judgment in the case of *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, §§ 288-293, ECHR 2011), he argued that the domestic remedies fell short of the requirements of Article 13 enunciated by the Court in its case-law.

123. First of all, a recourse before the Supreme Court against a decision by the Reviewing Authority or deportation and detention orders did not have automatic suspensive effect; nor did the filing of an application for a provisional order. If an application for such an order was filed, whether or not deportation would be suspended boiled down to a matter of practice which rested on the authorities' discretion and required a concession on the part of the applicant. Moreover, and contrary to the Government's submissions, the authorities did not always suspend deportation orders. The applicant relied on the court record in a recourse challenging a decision by the Reviewing Authority in a case in which deportation had taken place despite the fact that an application for a provisional order to suspend the execution of the deportation order had been filed. The person concerned had been deported the day before the hearing of the application by the Supreme Court. As a result the application was withdrawn (*Shahin Haisan Fawzy Mohammed*, see paragraph 84 above). The applicant also claimed that asylum-seekers faced a number of difficulties in filing applications for provisional orders. Such an order would only be granted on proof of flagrant illegality or irreparable damage. Further, until recently, legal aid was not available either for the institution of a recourse against deportation and detention orders or for an application for a provisional order (see paragraph 72 above).

124. Furthermore, although a decision by the Reviewing Authority was subject to judicial review, the Supreme Court could only examine its legality and could not examine the merits of the case. The scope of the Supreme Court's jurisdiction was therefore too limited. Moreover, although it was possible, in view of recent amendments to the relevant domestic legislation, to apply for legal aid when challenging an asylum decision, it was rarely granted. The Supreme Court would only approve an application if it held that the recourse had a reasonable chance of success. It was, however, for the person concerned to establish the likelihood of success, which was a difficult hurdle to surmount since he or she would not have legal representation at that stage.

125. Lastly, the applicant contended that there were significant shortcomings in the asylum procedures before the Asylum Service and the Reviewing Authority. As a result, the examination of asylum requests fell short of the standards required. The applicant referred to reports by, *inter*

alia, local non-governmental organisations[6] and the fourth ECRI report on Cyprus (see paragraph 97 above).

(b) The Government

126. The Government submitted that the applicant had had effective domestic remedies in respect of his complaints under Articles 2 and 3 of the Convention as required by Article 13.

127. The Government first pointed out that the applicant had had access to the asylum determination procedure at the Asylum Service and had been able to appeal to the Reviewing Authority. These remedies had suspensive effect. The applicant had then brought a recourse against the decision of the Reviewing Authority. Although these proceedings did not have automatic suspensive effect, in the course of the proceedings the applicant could have filed an application for a provisional order to suspend the execution of the deportation order issued against him. When such an application was filed, the authorities, as a matter of administrative practice, always suspended deportation either until the outcome of the main recourse or until the Supreme Court had reached a decision on the application. If an applicant agreed to an early hearing of the recourse and to withdraw the application for a provisional order, the authorities would suspend deportation for the duration of the entire main proceedings. Otherwise, deportation would be suspended only pending the examination of the application. The Government emphasised that the above practice was uniform and consistent and referred to a number of court records of judicial review proceedings in which both the above scenarios had taken place (see paragraphs 77-79 above).

128. As regards the application for a provisional order, the Government pointed out that in accordance with domestic case-law, the Supreme Court would grant an order if an applicant established the flagrant illegality of the decision taken or that he or she had suffered irreparable damage as a result of the decision.

129. The Government also claimed that the applicant should have brought a recourse challenging the deportation and detention orders issued against him. In such proceedings a provisional order could also be sought for the purpose of suspending deportation. The practice followed was the same as that in a recourse brought against a decision by the Reviewing Authority (see paragraph 127 above).

130. In addition, the Government observed that the authorities, as a matter of usual practice, suspended the deportation order of a rejected asylum seeker if there were medical, family or humanitarian reasons for doing so. Additionally, before the execution of a deportation order, the

[6] Report of May 2011 by the NGO "KISA" – "Action for Equality, Support, Antiracism "and Report of 21 July 2011 by the NGO "Future World Centre".

authorities examined *ex proprio motu* whether there were reasons to believe that a rejected asylum seeker's deportation would give rise to a real risk that he or she would be subjected to treatment in breach of Articles 2 and 3 of the Convention. The authorities also examined and decided any claim for suspension of the execution of the deportation irrespective of whether a recourse had been filed.

2. The Court's assessment

131. The Court has already found that the applicant's complaints under Articles 2 and 3 of the Convention are arguable and that the applicant can still claim to have been entitled to a remedy in that respect (see paragraphs 119-121 above).

132. The notion of an effective remedy under Article 13 in this context requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible. Consequently, it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *M. and Others v. Bulgaria*, no. 41416/08, § 129, 26 July 2011; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 153, 11 January 2007; and *Čonka v. Belgium*, no. 51564/99, § 79, ECHR 2002-I).

133. In cases concerning the expulsion of asylum-seekers the Court has explained that it does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled (see *M.S.S.*, cited above, § 286) or to any other receiving country in which he or she would be at a real risk of suffering treatment in violation of Article 3 (see, for example in the specific context of the application of the Dublin Regulation, *M.S.S.*, cited above, §§ 342 et seq). Where a complaint concerns allegations that the person's expulsion would expose him or her to a real risk of treatment contrary to Article 3 of the Convention, the effectiveness of the remedy for the purposes of Article 13 imperatively requires close scrutiny by a national authority (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 448, ECHR 2005-III), independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 (see *Jabari v. Turkey*, no. 40035/98, § 50, ECHR 2000- VIII), as well as a particularly prompt response (see *De Souza Ribeiro*, cited above, § 82). In such a case, effectiveness also requires that the person concerned should have access to a remedy with automatic suspensive effect (see, *inter alia*, *De Souza*, cited above, § 82, 13 December 2012; *I.M. v. France*, cited above, § 58; *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, § 32,

15 November 2011; *Auad v. Bulgaria*, no. 46390/10, § 120, 11 October 2011*; Diallo v. the Czech Republic*, no. 20493/07, § 74, 23 June 2011; *M.S.S.*, cited above, § 293; *Baysakov and Others v. Ukraine*, no. 54131/08, § 71, 18 February 2010; *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 108, 22 September 2009; and *Gebremedhin*, cited above, § 66). The same principles apply when expulsion exposes the applicant to a real risk of a violation of his right safeguarded by Article 2 of the Convention.

134. Turning to the present case, the Court notes that the applicant's asylum application and appeal thereto were initially rejected by the Cypriot authorities. His file, however, was subsequently re-opened for re-examination in view of new information put forward by the applicant (see paragraph 17 above). When the first set of deportation and detention orders were issued on 11 June 2010 on the ground that the applicant was in Cyprus unlawfully, these proceedings were still pending (see paragraphs 17-22 above). Even though it appears that an internal note had been prepared a few days before by an officer of the Asylum Service with a negative proposal, no formal decision had been taken at this stage (see paragraph 18 above). The Reviewing Authority gave its decision on 30 September 2010 after having taken up the matter from the Asylum Service (see paragraph 22 above). The Court notes in this connection that under domestic law, proceedings before the Asylum Service and the Reviewing Authority are suspensive in nature. Consequently, as admitted by the Government in their observations of 20 September 2011 (see paragraph 182 below) a mistake had been made by the authorities as, at the time, the applicant had been in Cyprus lawfully. He should not, therefore, have been subject to deportation.

135. The Government argued that the applicant should have lodged a recourse with the Supreme Court seeking the annulment of the deportation orders and that he should have applied for a provisional order to suspend his deportation in the context of those proceedings. The Court observes, however, that neither a recourse against deportation and detention orders, nor an application for a provisional order in the context of such proceedings, has automatic suspensive effect. Indeed, the Government have conceded this.

136. The Government emphasised that an application for a provisional order was suspensive "in practice". In particular, as a matter of administrative practice, the authorities refrained from removing the person concerned until a decision had been given by the Supreme Court on the application or, in the event of an agreement being reached between the parties entailing the withdrawal of the application and an early hearing, until the end of the main proceedings.

137. The Court reiterates, however, that the requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement. This is one of the consequences of the rule of law, one of the fundamental principles of

a democratic society, which is inherent in all the Articles of the Convention (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The Court has, therefore, rejected similar arguments put before it in other cases concerning deportation advocating the sufficiency of a suspensive effect in "practice" (see, for example, *Gebremedhin*, § 66; and *Čonka*, §§ 81-83 both cited above). It has further pointed out the risks involved in a system where stays of execution must be applied for and are granted on a case-by-case basis (see *Čonka*, cited above, § 82).

138. Given the above, the applicant cannot be found to be at fault for not having brought such proceedings (see, *mutatis mutandis*, *Diallo*, cited above, § 78).

139. The Court further points out that the deportation and detention orders were obviously based on a mistake made by the authorities. Since the applicant's asylum application was being re-examined, he continued to have the benefit of suspensive effect (see paragraphs 74, 127 and 134 above). Yet, despite this the orders against the applicant continued to remain in force for more than two months, during which the re-examination of his asylum claim was still taking place, and the applicant was not removed to Syria during this period solely because of the application of Rule 39. No effective domestic judicial remedy was available to counter this error. Moreover, the Court notes the lack of any effective safeguards which could have protected the applicant from wrongful deportation at that time.

140. The Court also observes that the deportation and detention orders of 11 June 2010 were subsequently annulled by the authorities and were replaced on 20 August 2010 by new orders issued on different grounds (see paragraph 48 above). Likewise, these too could not be executed until the re-examination of his asylum claim by the authorities had been completed (see the judgment of the Supreme Court in *Asad Mohammed Rahal*, paragraph 74 above). Following the Reviewing Authority's decision of 30 September 2010, however, the applicant was no longer authorised to remain in the country. Although the applicant filed a recourse before the Supreme Court against that decision, those proceedings were not automatically suspensive. Furthermore, in so far as the Government argue that the applicant should have filed an application for a provisional order to suspend his deportation in the course of those proceedings, the Court has already found that such an application does not have automatic suspensive effect (see paragraph 135 above). A recourse against the new orders would also suffer from the same shortcoming. As a result, the applicant could have been removed before the Supreme Court reached a decision on the matter.

141. The Court concludes therefore that the applicant did not have an effective remedy in relation to his complaint under Articles 2 and 3 of the Convention.

142. There has therefore been a violation of Article 13 of the Convention.

143. In view of the above conclusion, the Court does not need to examine the applicant's remaining complaint under this head concerning the scope of judicial review proceedings.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

144. The applicant complained that he did not have an effective remedy at his disposal to challenge the lawfulness of his detention. He relied on Article 5 § 4 of the Convention, which provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

145. The Government contested that argument.

A. Admissibility

146. The Government submitted that the applicant had not exhausted domestic remedies as he had failed to lodge a recourse under Article 146 of the Constitution challenging the lawfulness of the decision to detain and deport him.

147. The applicant submitted in reply that this remedy was incompatible with Article 5 § 4 both in terms of "speediness" and scope.

148. The Court finds that the issue raised by the Government's plea of non-exhaustion of domestic remedies in reality goes to the merits of Article 5 § 4, namely, whether or not the applicant had at his disposal during his detention a remedy which would have provided him with an adequate and speedy judicial review of the lawfulness of his detention. The Court will therefore address this issue when examining the substance of the applicant's complaint under this provision.

149. It further notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

150. The applicant submitted that there were no effective domestic remedies complying with the requirements of Article 5 § 4 of the Convention. First of all, he claimed that recourse proceedings before the

Supreme Court against deportation and detention orders were excessively long and did not respect the requirement of speediness. In this connection, the applicant maintained that the average time for a recourse was one and a half to two years at first instance and three to four years on appeal. The applicant criticised the data provided by the Government, arguing that there was no information concerning the methodology used to calculate the average length of such proceedings. In particular, the Government had omitted to explain whether the average length of eight months provided in the data only concerned recourses which followed their normal course, or also recourses which were eventually withdrawn or in which an application for a provisional order had been filed and then withdrawn in exchange for an "accelerated" procedure. Further, the Government had failed to provide data on the length of appeal proceedings. In this respect, the applicant asserted that there was a significant delay in the examination of appeals. He noted that he had managed to find four cases in which appeal proceedings had been decided between 2008 and 2011, the average length of which had been three years. The applicant admitted, however, that he was not in a position to say whether the persons concerned had remained in detention during that period.

151. As to the examples of recourses relied on by the Government (see paragraphs 77-79 above), the applicant submitted that these did not give an accurate picture of the situation. Four out of the five recourses had been eventually withdrawn by the persons concerned. The remaining one mainly concerned the lawfulness of the Reviewing Authority's decision and not of the deportation and detention orders (see paragraph 79 above). A further three of the recourses could not be considered as separate cases as they involved members of the same family and had been jointly examined.

152. The applicant also referred to four recourses in which the persons concerned had submitted an application for a provisional order and then withdrawn it in exchange for what the Government had claimed to be a speedy procedure. In these cases, the recourses had not been withdrawn and the duration of the proceedings ranged from approximately four months to over six months (see paragraphs 80-83 above).

153. The applicant submitted that it was not reasonable to expect applicants in detention and deportation cases, with no means of subsistence, to have to lodge an *ex parte* application for a provisional order on top of a recourse, only to subsequently withdraw it in order to secure suspension of their deportation and a speedy determination of the legality of the deportation and detention orders. The applicant pointed out in this respect that there were practical difficulties associated with filing *ex parte* applications in deportation cases.

154. The applicant also challenged the remedy in terms of its accessibility. First of all, the letters sent out by the authorities notifying the issuance of the deportation and detention orders made no mention of the

remedies available to challenge their lawfulness. Secondly, although it was possible in view of recent amendments to the relevant domestic legislation to apply for legal aid in deportation and detention cases, this was, as in asylum cases, rarely granted (see paragraphs 72, 76 and 124 above).

155. Besides these difficulties and the lack of speediness, the applicant argued that a recourse under Article 146 of the Constitution was also deficient in scope, as the Supreme Court's jurisdiction was limited to examining the legality of the case and not its substance. Consequently, even if successful, this procedure was not always capable of leading to the release of the person concerned. The applicant explained that in the event of an annulment by the Supreme Court of deportation and detention orders, the authorities would simply issue new deportation and detention orders, taking care to ensure that they did not commit the same errors, and the detention would continue on the basis of the new orders. A fresh recourse would then have to be filed against the new decision.

156. The applicant went on to stress that the domestic law did not provide for periodic review of detention for the purpose of deportation. Once deportation and detention orders were issued they were only subject to judicial review by the Supreme Court through the Article 146 procedure. A habeas corpus application could only be brought in order to challenge the lawfulness of detention in terms of its length. Although the applicant had used this remedy, he had been unsuccessful (see paragraphs 50-55 above). Referring to his habeas corpus application, the applicant, in his observations of 12 August 2012, complained that these proceedings did not comply with the requirements of Article 5 § 4.

157. Finally, the applicant referred to the recent report by Amnesty International on the detention of migrants and asylum seekers in Cyprus, (see paragraphs 100-104 above).

(b) The Government

158. For their part, the Government submitted that the applicant had had an effective procedure at his disposal through which he could have obtained his speedy release. In particular, the applicant could have lodged a recourse under Article 146 of the Constitution challenging the lawfulness of the decision to detain and deport him. If he had succeeded, the relevant order would have been annulled and he would have been released. The applicant could also have filed, in the context of the recourse, an application for a provisional order seeking the suspension of his deportation. If the applicant had taken these steps he could have been released quickly. In this respect, the Government repeated their submissions under Article 13 of the Convention that, as a matter of administrative practice, if the applicant had agreed to an early hearing of the recourse and withdrawn his application for a provisional order, the authorities would have suspended the execution of the deportation order and the proceedings would have been expedited (see

paragraphs 127-129 above). The lawfulness of the deportation and detention orders would have been adjudicated in a matter of weeks. The Government referred to the records of the proceedings in a number of recourses as examples of expedited judicial review proceedings (see paragraphs 77-79 above).

159. The Government also submitted that according to official data the average length of first-instance proceedings in recourses against deportation and detention orders in the years 2010 and 2011 had been eight months. However, no data were available concerning appeal proceedings as, according to the Supreme Court registry records, only two appeals had been lodged during these two years. One had been withdrawn and one was still pending.

2. The Court's assessment

(a) General principles

160. Article 5 § 4 entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness" of his or her deprivation of liberty. The notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only of the requirements of domestic law but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see, as a recent authority, *Stanev v. Bulgaria* [GC], no. 36760/06, § 168, ECHR 2012). The remedies must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of his or her detention capable of leading, where appropriate, to his or her release (see *Louled Massoud v. Malta*, no. 24340/08, § 39 July 2010). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see *Čonka*, cited above, §§ 46 and 55). The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, amongst many authorities, *Nasrulloyev v. Russia*, no. 656/06, § 86, 11 October 2007, and *Kadem v. Malta*, no. 55263/00, § 41, 9 January 2003).

161. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009 with further references).

162. Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see *Sarban v. Moldova*, no. 3456/05, § 118, 4 October 2005, and *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). The Court has laid down strict standards in its case-law concerning the question of State compliance with the speed requirement. In the cases of *Sarban* and *Kadem* (both cited above) and *Rehbock v. Slovenia* (no. 29462/95, § 84, ECHR 2000-XII), for example, the Court considered that time-periods of twenty-one, seventeen and twenty-three days, respectively, were excessive.

163. The question whether the right to a speedy decision has been respected must – as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case (see *Rehbock*, cited above; *G.B. v. Switzerland*, no. 27426/95, § 33, 30 November 2000; and *M.B. v. Switzerland*, no. 28256/95, § 37, 30 November 2000). An applicant, however, will not be required to pursue a particular remedy where the Court finds from the information and submissions before it that it would not have ensured a speedy review of his or her detention (see, for example, *Louled Massoud*, cited above, §§ 44-45, 27 July 2010, and *Sabeur Ben Ali v. Malta*, no. 35892/97, § 40, 29 June 2000).

(b) Application to the present case

164. Turning to the present case, the Court observes at the outset that the fact that the applicant was released on 3 May 2011 upon being granted refugee status does not render his complaint under this provision devoid of purpose bearing in mind that he was detained for more than ten months (see *inter alia, Sadaykov v. Bulgaria*, no. 75157/01, § 33, 22 May 2008; *Čonka*, cited above, § 55, *in limine*; and *Louled Massoud*, § 14, cited above; see also, *mutatis mutandis*, *Kormoš v. Slovakia*, no. 46092/06, §§ 93-94, 8 November 2011).

165. The Court notes that under domestic law, the lawfulness of deportation and detention can only be examined in the context of a recourse brought under Article 146 of the Constitution within the required time-limit

(see paragraphs 67-70 above). The Court has already examined the effectiveness of this remedy in so far as deportation is concerned for the purposes of Article 13 taken together with Articles 2 and 3. It must, however, now consider in so far as detention is concerned whether it meets the requirements of Article 5 § 4 of the Convention.

166. The applicant did not make use of this remedy to challenge the detention orders issued against him as he claimed that it was deficient in speed and scope for the purposes of Article 5 § 4.

167. As regards the requirement of "speediness", the Court notes that according to the Government's submissions the average length of a recourse challenging the lawfulness of a detention order, as also, at the same time, of a deportation order, is eight months at first instance (see paragraph 159 above). This is undoubtedly far too long for the purposes of Article 5 § 4.

168. The Court has also examined the examples relied on by the Government in support of their contention that such proceedings can be expedited. These, however, are not at all satisfactory, even though the proceedings were of a lesser duration than the average given. The Court observes in this connection that the shortest time taken for the proceedings in these examples lasted one month and seventeen days and two months and twenty days respectively (see paragraphs 77-78 above). These periods are still excessive, bearing in mind the strict standards set down by the Court in its case-law (see paragraph 162 above) and the fact that they ended due to a withdrawal of the recourse by the persons concerned, without judgment having been given on the lawfulness of the decisions to deport and detain them. Not even one hearing had been held within the respective periods. The Court also notes that the applicants in these cases had to reach an agreement with the Government in order to expedite the proceedings. The Court reiterates in this respect that under Article 5 § 4 of the Convention the existence of domestic remedies must be sufficiently certain (see paragraph 160 above) and that "speediness" is an indispensable requirement of that provision, which does not depend on the parties reaching an agreement in the proceedings.

169. In view of the above considerations, the Court finds that pursuing a recourse would not have provided the applicant with a speedy review of the lawfulness of the decision to detain him, as required by Article 5 § 4 of the Convention. It is therefore unable to agree with the Government that the applicant should have tried that remedy.

170. Accordingly, the Court concludes that there has been a violation of Article 5 § 4 of the Convention.

171. Having regard to this finding, the Court does not consider it necessary to examine the remainder of the applicant's complaints concerning the judicial review proceedings (see paragraphs 154-155 above) and those subsequently raised in his observations in relation to the habeas corpus proceedings (see paragraph 156 above).

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

172. The applicant further complained that his detention had been unlawful and therefore in breach of Article 5 § 1 (f) of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The parties' submissions

1. The applicant

173. The applicant submitted that his detention from 11 June 2010 until 3 May 2011 had been arbitrary and contrary to Article 5 § 1 (f) of the Convention. First of all, he had been arrested on the above-mentioned date without a warrant even though he had not been arrested for committing a flagrant offence. Although the authorities claimed that the protesters, including the applicant, had committed a number of offences under, for example, the Public Roads Law, they had not arrested them on such grounds. Further, the authorities did not know at the time the names and particulars of the protesters and could not therefore have known whether they had been staying in Cyprus unlawfully. Consequently, until the deportation and detention orders were issued against him, his arrest and detention had not been in conformity with the procedural requirements of domestic law and Article 11 (3) of the Constitution (see paragraph 88 above). The applicant noted in this respect that in the light of the Government's observations it was not at all clear on what grounds he had actually been arrested and detained during this period.

174. Secondly, the authorities had proceeded to issue deportation and detention orders against him under the Aliens and Immigration Law on the basis that he was an unlawful immigrant. Yet, according to the domestic law, the applicant had been lawfully residing in Cyprus as his asylum application was still pending with the Reviewing Authority. In fact, the decision of the Reviewing Authority had been taken on 30 September 2010, that is, more than three months after his arrest. Nonetheless, the applicant had been kept in detention throughout this period.

175. Thirdly, the new orders issued by the authorities on 20 August 2010 on public order grounds had been completely unjustified. The Government

pleaded that the applicant had been dangerous to the public order and the security of the Republic but did not put forward any justification or evidence in this respect. In the applicant's view the authorities had acted in bad faith and/or on the basis of misinformation. Furthermore, those orders had never been communicated to the applicant in accordance with section 14 (6) of the Aliens and Immigration Law. The applicant found out about the decision of the Minister of the Interior when he received a copy of the Government's letter of 12 October 2010 to the Court informing the latter of the issuance of these orders (see paragraphs 47-48 above).

176. Even assuming, however, that his detention had been compatible with the domestic law, the applicant considered that it had ceased to be so because of its excessive duration. Unlike in the case of *Chahal v. the United Kingdom* (15 November 1996, *Reports* 1996-V), the length of detention in his case could not be justified on the basis of any exceptional circumstances. The authorities had not been able to deport the applicant only because of the Court's interim measure. In addition, the maximum period of detention of six months, provided for in Directive 2008/115/EC (see paragraphs 86 and 98 above) which had been directly applicable in domestic law, had elapsed. Despite this the authorities had continued to detain him. In the applicant's view, his continued detention could only be considered as a form of punishment. The authorities could have released him and granted him a temporary residence permit on humanitarian grounds pending the examination of his case both domestically and by the Court.

2. The Government

177. The Government submitted that an unacceptable situation had been created by the protesters on one of the busiest streets of Nicosia, on which office blocks and public buildings were situated. It posed a risk to the health of both the public and the protesters themselves, it obstructed the free passage of traffic and pedestrians, it caused a public nuisance and it created a risk of spreading disease to members of the public who worked and lived in the area and who had complained to the authorities. The protesters had refused to co-operate with the authorities and efforts to persuade them to leave had been to no avail.

178. There had been two avenues open to the authorities: either to arrest the protesters for a number of flagrant criminal offences committed at the place of protest and punishable by imprisonment, for example, under the Public Roads Law (Cap. 83, as amended) and the Prevention of Pollution of Public Roads and Places Law (Law 19 (I)/92, as amended) (see paragraphs 91-92 above), or to take measures to peacefully remove the protesters. They had opted for the latter course of action in order to avoid a risk of a violent reaction or clashes and to enable a careful examination of the immigration status of each protester. It would have been impossible for

the police to do an on-the-spot check. In taking their decision the police had also considered that there were women and children among the protesters.

179. The Government noted that on 11 June 2010 the police, in removing the protesters, including the applicant, had acted in the exercise of their duties under the Police Law (Law no. 73(I)/2004 as amended) in order to, among other things, prevent the commission of criminal offences and public nuisance, maintain order on public roads, streets, passages and places to which the public had access and regulate the maintenance of order in cases of obstruction of public roads and streets and other places to which the public had access (sections 24(2) and 29(1)(c) and (d) of the Law, see paragraphs 89-90 above). The aim of the police had been to remove the protesters peacefully and transfer them to the ERU headquarters in order to question them for the purpose of ascertaining their names and status and, in particular, to identify those whose asylum applications had been rejected and who were unlawfully residing in the Republic. The Government considered that it had been completely legitimate, in the course of an operation for the removal of the protesters from the street, to also try to identify any Kurds from Syria who had been staying in the Republic unlawfully following the rejection of their asylum applications.

180. The Government emphasised in this regard that neither the applicant nor the other protesters had been deprived of their liberty when they had been removed from the street and taken to the ERU headquarters along with the other protesters. Nor had they been deprived of their liberty at the headquarters during the examination of their papers for the purpose of determining their immigration status. The authorities had transferred the protesters, including the applicant, to the ERU headquarters for identification purposes and not to arrest and detain them (relying on *X. v Germany*, no. 8819/79, Commission decision of 19 March 1981, Decisions and Reports (DR) vol. 24, p. 158). They had not been kept in cells, they had not been handcuffed and they had been given food and drink. Those who had been identified as being lawfully resident in the Republic had gone home. The rest had been arrested. The applicant's detention had commenced once he had been charged with the flagrant criminal offence of unlawful stay in the Republic and arrested on this ground.

181. In this connection, in their first set of observations to the Court dated 3 June 2011, the Government maintained that the applicant's arrest and detention on the ground of unlawful stay had been lawful as it had been in conformity with domestic law and procedure. The applicant had been arrested on the ground that he had been a "prohibited immigrant" staying in the Republic unlawfully after the rejection of his asylum application. They noted in this respect that the criminal offence of unlawful stay was a flagrant offence punishable by imprisonment under section 19 (2) of the Aliens and Immigration Law. Article 11 (4) of the Constitution permitted arrest without a warrant for flagrant offences carrying a term of

imprisonment. The deportation and detention orders had been issued on the same day, before the lapse of the twenty-four hour time-limit set by Article 11 (5) of the Constitution. His detention had continued on the basis of these orders for the purpose of effecting his deportation.

182. In their subsequent observations of 20 September 2011, however, the Government admitted that a mistake had been made with regard to the applicant. As his asylum application had been pending with the authorities at the time, the applicant had in fact at the time of his arrest been legally residing in the Republic.

183. The Government made no submissions, further to their letter of 12 October 2010 (see paragraph 47 above), with regard to the new deportation and detention orders issued against the applicant on 20 August 2010 and his continued detention on that basis. They did not comment on whether the applicant had been given notice of those orders either.

B. The Court's assessment

184. The Court notes that the applicant's complaint under Article 5 § 1 of the Convention can be divided into three parts that require separate examination:

- the first part concerns his transfer, along with the other protesters, to the ERU headquarters on 11 June 2010 and his stay there pending his identification;

- the second part concerns his detention on the basis of the deportation and detention orders issued against him on 11 June 2010 under section 6(1)(k) of the Aliens and Immigration Law; and

- the third part concerns his detention on the basis of the deportation and detention orders issued against him on 20 August 2010 under section 6(1)(g) of the Aliens and Immigration Law.

1. The applicant's transfer to and stay at the ERU headquarters on 11 June 2010

(a) Admissibility

185. The Court notes that the parties disagree on whether or not the applicant's situation during this period amounted in practice to a deprivation of liberty. The Government dispute the applicant's arguments and, hence, the applicability of Article 5 § 1 of the Convention to this period.

186. Article 5 § 1, which proclaims the "right to liberty", is concerned with a person's physical liberty. Its aim is to ensure that no one should be dispossessed of his liberty in an arbitrary fashion. In determining whether someone has been "deprived of his liberty" within the meaning of Article 5 § 1, the starting-point must be his concrete situation and account must be

taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance (see, amongst many authorities, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, 15 March 2012; *Stanev* , cited above, § 115, 17 January 2012; *Medvedyev and Others v. France* [GC], no. 3394/03, § 73, ECHR 2010; and *Guzzardi v. Italy*, 6 November 1980, §§ 92-93). It is clear that the question whether there has been a deprivation of liberty is very much based on the particular facts of a case (see, for example, *Austin*, § 61, cited above).

187. In determining whether or not there has been a violation of Convention rights it is often necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (for example, in relation to Article 5 § 1, see, *Creangă v. Romania* [GC], no. 29226/03, § 91, 23 February 2012 and *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50). The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty.

188. The Court notes that in cases examined by the Commission, the purpose of the presence of individuals at police stations, or the fact that the parties concerned had not asked to be allowed to leave, were considered to be decisive factors. Thus, children who had spent two hours at a police station in order to be questioned without being locked up were not found to have been deprived of their liberty (see *X. v. Germany*, n° 8819/79, cited above) nor was an applicant who had been taken to a police station for humanitarian reasons, but who was free to walk about on the premises and did not ask to leave (see *Guenat v. Switzerland* (dec.), no. 24722/94, Commission decision of 10 April 1995). Likewise, the Commission attached decisive weight to the fact that an applicant had never intended to leave the courtroom where he was taking part in a hearing (see *E.G. v. Austria*, no. 22715/93, Commission decision of 15 May 1996).

189. The case-law has evolved since then, as the purpose of measures taken by the authorities depriving applicants of their liberty no longer appears decisive for the Court's assessment of whether there has in fact been a deprivation of liberty. To date, the Court has taken this into account only at a later stage of its analysis, when examining the compatibility of the measure with Article 5 § 1 of the Convention (see *Creangă*, § 93, cited above; *Osypenko v. Ukraine*, no. 4634/04, §§ 51-65, 9 November 2010; *Salayev v. Azerbaijan*, no. 40900/05, §§ 41-42, 9 November 2010; *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008; and *Soare and Others v. Romania*, no. 24329/02, § 234, 22 February 2011).

190. Furthermore, the Court reiterates its established case-law to the effect that Article 5 § 1 may also apply to deprivations of liberty of a very

short length (see, among many authorities, *Brega and Others v. Moldova*, no. 61485/08, § 43, 24 January 2012; *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011; *Iskandarov v. Russia*, no. 17185/05, § 140, 23 September 2010; *Rantsev v. Cyprus and Russia*, no. 25965/04, § 317, ECHR 2010 (extracts); and *Foka v. Turkey*, no. 28940/95, § 75, 24 June 2008).

191. Turning to the facts of the present case, the Court observes that according to the available information a large-scale operation was carried out on 11 June 2010 at 3 a.m. involving about 250 police officers, in order to remove the protesters from the place of protest (see paragraph 36 above). The applicant and another 148 protesters were boarded on buses and taken to the ERU headquarters where they remained for a number of hours pending their identification and ascertainment of their immigration status.

192. The Court first notes in this respect that in contrast to the exceptional circumstances examined by the Court in *Austin* (cited above, §§ 66 and 68), there is no evidence in the instant case that the police were faced, at the place of protest, with a volatile or dangerous situation that gave rise to a real and immediate risk of violent disorder or serious injury to persons or property.

193. Second, although it appears that there was no resistance on the part of the protesters, it cannot be said that they had in the circumstances a real choice and that they boarded the buses and remained on the police premises voluntarily. The Court notes in this respect that the operation took place at 3 a.m., at a time when the majority of the protesters were sleeping (see paragraph 36 above). Bearing in mind the nature, scale and aim of the operation, the manner in which it was carried out and the overall measures taken by the authorities, it would be unrealistic to assume that the protesters were free to refuse to board the buses or to leave the police headquarters. Nor have the Government indicated that they were. It is clear that the aim of the operation was also to identify the protesters who were staying in the country unlawfully with a view to deporting them. Only those who were found to be lawfully residing in Cyprus were able to leave the premises. There was undoubtedly an element of coercion, which in the Court's view is indicative of a deprivation of liberty within the meaning of Article 5 § 1. The fact that nobody had been handcuffed, put in cells or otherwise physically restrained during the period in question does not constitute a decisive factor in establishing the existence of a deprivation of liberty (see *I.I. v. Bulgaria*, no. 44082/98, § 87, 9 June 2005, and *Osypenko*, cited above, § 32).

194. The Court also refers, in this respect, to the instructions received by the police to use "discreet methods of arrest" (see paragraph 31 above).

195. In these circumstances the Court considers that the applicant's transfer to and stay in the ERU headquarters during this period amounted to

a *de facto* deprivation of liberty within the meaning of Article 5 § 1 and that this provision applies to his case *ratione materiae.*

196. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

197. The Court must now determine whether the applicant's detention was compatible with Article 5 § 1. It reiterates that in order to comply with this provision, the detention in issue must first of all be "lawful". This must include the observance of a procedure prescribed by law. In this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see *Benham v. the United Kingdom*, 10 June 1996, § 40, *Reports* 1996-III). However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

198. The Court must, moreover, ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see *Zervudacki v. France*, no. 73947/01, § 43 and *Baranowski v. Poland*, §§ 50-52, cited above).

199. In the present case, the Government have submitted that the applicant, along with the other protesters, was not deprived of his liberty during this period (see paragraph 180 above). It appears that for this reason, although they have given explanations for the actions of the authorities, they have not relied on any particular provision as a legal basis for the deprivation of liberty.

200. In this particular regard, the Government have submitted that the authorities opted for the peaceful removal of the protesters and that the police acted in exercise of their duties under the Police Law in order to, *inter alia*, prevent the commission of certain criminal offences and public nuisance and to maintain order on public roads and in public areas (see paragraphs 89-90 above). The specific provisions referred to by the Government concern the powers and duties of police officers to arrest people they are lawfully authorised to arrest and their duty to preserve order on public roads and to regulate movement, but it has not been claimed that

any of these powers were actually used to effect the arrest of the applicant and the other protesters.

201. At the same time, the Government submitted that the operation also aimed to identify the protesters and ascertain their legal status. The authorities suspected that a number of the protesters were failed asylum seekers and, therefore, "prohibited immigrants", but considered that it would have been impossible to carry out an effective on-the-spot inquiry without provoking a violent reaction. Consequently, all the protesters were taken to the ERU headquarters for identification purposes and to determine whether or not they were unlawful immigrants. The Government have not, however, acknowledged that there was a deprivation of liberty on this ground.

202. The Court is conscious of the difficult situation that the Cypriot authorities found themselves in and that an operational decision had to be taken. This, however, cannot justify the adoption of measures giving rise to a deprivation of liberty without any clear legal basis.

203. It follows that the applicant's deprivation of liberty during this period was contrary to Article 5 § 1 of the Convention. There has, therefore, been a violation of this provision.

2. The applicant's detention on the basis of the deportation and detention orders issued on 11 June 2010 and 20 August 2010

(a) Admissibility

204. The Court notes that it is not disputed that the applicant was deprived of his liberty from 11 June 2010 until 3 May 2011 on the basis of deportation and detention orders issued under the Aliens and Immigration Law.

205. The Court further notes that the applicant's complaints under this head are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Merits

206. The Court is satisfied that the applicant's deprivation of liberty from 11 June 2010 to 3 May 2011 fell within the ambit of Article 5 § 1 (f) of the Convention as he was detained for the purpose of being deported from Cyprus. This provision does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c) (see *Chahal* §§ 112-113 and *Čonka,* § 38, both cited above). All that is required under this provision is that "action is being taken with a view to deportation". It is therefore immaterial, for the

purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Chahal*, cited above, § 112).

207. The Court notes that Cypriot law allows for the possibility of detention with a view to deportation. The Court observes in this respect that both the decisions of 11 June and 20 August 2010 ordering the applicant's detention and deportation were based on section 14 of the Aliens and Immigration Law, which permits the Chief Immigration Officer to order the deportation of any alien who is a prohibited immigrant and his or her detention in the meantime (see paragraph 63 above).

208. It follows that the issue to be determined is whether the applicant's detention under that provision was "lawful", including whether it complied with "a procedure prescribed by law" (see paragraphs 197-198 above).

i. The applicant's detention between 11 June and 20 August 2010 on the basis of the deportation and detention orders of 11 June 2010

209. The Court notes that the applicant was charged on 11 June 2010 with the offence of unlawful stay and was detained, on the basis of deportation and detention orders issued on the same day, for a total of two months and nine days. These orders had been issued pursuant to section 6(1)(k) of the Aliens and Immigration Law on the ground that the applicant was a "prohibited immigrant" staying in the Republic unlawfully. However, it is clear from the information before the Court that this was not the case as, at the time, the re-examination of the applicant's asylum application was still pending. Indeed, the Government admitted in their observations of 20 September 2011 that the applicant had been legally residing in the Republic and that a mistake was made by the authorities.

210. In these circumstances, the Court finds that during this period the applicant was unlawfully deprived of his liberty. There has therefore been a violation of Article 5 § 1 of the Convention.

ii. The applicant's detention between 20 August 2010 and 3 May 2011 on the basis of the deportation and detention orders of 20 August 2010

211. By a letter dated 12 October 2010, the Government informed the Court that on 17 August 2010 the Minister of Interior had declared the applicant an illegal immigrant on public order grounds under section 6(1)(g) of the Aliens and Immigration Law, on the basis of information that he had been involved in activities relating to the receipt of money from prospective Kurdish immigrants in exchange for securing residence and work permits in Cyprus. Deportation and detention orders had then been issued on 20 August 2010 on the basis of the above provision and the previous orders of 11 June 2010 were annulled (see paragraphs 47-48 above). The applicant was therefore detained on the basis of these orders for another eight months and twelve days until his release on 3 May 2011. The applicant, however,

claims that the orders had not been communicated to him in accordance with domestic law and that he had found out about the decision of the Minister of the Interior following an exchange of information between the parties in the context of the Court proceedings.

212. The Court first observes that there does not appear to have been any follow-up to the allegations against the applicant so as to lend support to what was imputed to him.

213. Secondly, the Court notes that, according to section 14(6) of the Aliens and Immigration Law, a person against whom a detention and/or deportation order has been issued shall be informed in writing, in a language which he understands, of the reasons for the decision unless this is not desirable on public-security grounds (see paragraph 63 above). This provision affords certain minimum guarantees to persons against whom a decision to deport and/or detain has been taken (see the Supreme Court's judgments in *Uros Stojicic* and *Kamran Sharajeel*, paragraph 64 above).

214. The Government, on 12 October 2010, provided the Court with a copy of the deportation and detention orders, which were written in Greek. However, they have not submitted any evidence that the applicant was notified by the authorities of the issuance of these orders and the new grounds for his detention. Indeed, the Government have not made any submissions on this matter.

215. Consequently, in the absence of any evidence or explanation by the Government to the contrary, the Court finds that the applicant was not given notice of the new deportation and detention orders in accordance with section 14(6) of the Aliens and Immigration Law. Although section 14(6) provides an exception to this rule on public-security grounds, the Government have not pleaded this as a reason for not communicating the orders to the applicant. Nor can it be said, on the basis of the file in any event, that there was a potential public-security issue.

216. The Court therefore finds that the procedure prescribed by law was not followed (see *Voskuil v. the Netherlands*, no. 64752/01, §§ 81-83, 22 November 2007).

There has accordingly also been a violation of Article 5 § 1 of the Convention in so far as this period of detention is concerned.

C. Overall conclusion

217. The Court finds a violation of Article 5 § 1 of the Convention in respect of the applicant's entire period of detention, namely, from 11 June 2010 until 3 May 2011 (see paragraphs 197-203, 209-210 and 211-216 above).

V. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

218. The applicant complained that the authorities had not complied with the requirements of Article 5 § 2 of the Convention. This provision reads as follows:

> " Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

219. The Government contested that argument.

A. Admissibility

220. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

221. First of all, the applicant submitted that he had not been informed of the grounds for his arrest either at the place of protest or when he was brought to the ERU headquarters. It was only on 14 June 2010, more than 72 hours after his arrest, that he had been informed orally that he would be deported to Syria on the same day. Relying on the Court's judgment in *Saadi v. the United Kingdom* ([GC], no. 13229/03, ECHR 2008), the applicant pointed out that this could not be considered to be "prompt" and therefore in line with the requirements of Article 5 § 2. Although the applicant, along with a number of others, had submitted a Rule 39 request the day after his arrest, this had been due to the involvement of other members of the Kurdish community in Cyprus and the Yekiti Party who had been afraid that there was a serious possibility of deportation and instructed a lawyer to take action on behalf of those concerned.

222. Furthermore, the applicant pointed out that the deportation and detention orders had not been served on him. He had found out about them through his lawyer, following the receipt of information submitted by the Government to the Court in the context of the application of Rule 39 of the Rules of Court. Likewise, the applicant had not been served with the letter of 11 June 2010. In this connection, the applicant noted that he had never refused to take receipt of any kind of information in writing. He also considered it strange that police officers in different detention centres had managed to co-ordinate and deliver all these letters to so many people on

the same day. In any event, the letter addressed to the applicant was in English, a language that he could not understand. Moreover, it did not contain any information as to the remedies available for challenging the decision to detain and deport him.

223. Lastly, the applicant had not been notified of the new orders issued against him on 20 August 2010 but had found out about the decision of the Minister of the Interior when he received a copy of the Government's letter of 12 October 2010 to the Court informing the latter of the issuance of those orders (see paragraphs 47-48 above).

(b) The Government

224. The Government submitted that once he had been identified at the ERU headquarters, the applicant was arrested and charged with the flagrant offence of unlawful stay in the Republic. He had been told there and then of the reasons for his arrest and detention, namely, that he had been staying on the territory unlawfully and was therefore a "prohibited immigrant". He had also been informed that he had been detained with a view to his deportation and that this was imminent. Further, he had been informed of his right, under the Law on the Rights of Persons who are Arrested and Detained (Law no. 163(1)/2005), to contact a lawyer of his own choice (see paragraph 93 above). As a result the applicant had been able to appoint a lawyer and apply to the Court for an interim measure. In any event, the Government considered that in view of the identification process at the ERU headquarters, during which the police had asked the applicant for his identity papers and questioned him about his immigration status, the reasons for his arrest and detention must have been evident to him.

225. In addition, the Government noted that a letter had been prepared in English by the Civil Registry and Migration Department informing the applicant of the authorities' decision to deport him and the reasons for that decision. The letter also informed the applicant that his temporary residence permit had been revoked and that he had the right to be represented before the authorities, to seek the services of an interpreter and to express possible objections to his deportation. The applicant had, however, refused to sign and receive the letter (see paragraph 44 above).

226. The Government did not make any submissions as to whether the applicant had been notified on 20 August 2010 of the new deportation and detention orders and, consequently, the change of the legal basis of his detention (see paragraph 183 above).

2. The Court's assessment

(a) General principles

227. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that anyone who has been arrested should know why

he is being deprived of his liberty. This is a minimum safeguard against arbitrary treatment. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 anyone who is arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed are sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182). Anyone entitled to take proceedings to have the lawfulness of his detention speedily decided cannot make effective use of that right unless he is promptly and adequately informed of the reasons relied on to deprive him of his liberty (see *Van der Leer v. the Netherlands*, 21 February 1990, § 28, Series A no. 170-A). Further, if the grounds for detention change, or if new relevant facts arise concerning the detention, a detainee has a right to this further information (see *X. v. the United Kingdom*, no. 6998/75, Commission's report of 16 July 1980, § 105, Series B no. 41).

228. The constraints of time imposed by the notion of promptness will be satisfied where the reasons for the arrest are provided within a few hours of arrest (see *Kerr v. the United Kingdom* (dec.), no. 40451/98, 7 December 1999, and *Fox, Campbell and Hartley*, cited above, § 41). A violation was found by the Court where seventy-six hours elapsed before the applicants were informed of the reasons of detention (*Saadi*, §§ 55-56, cited above; see also *Shamayev and Others v. Georgia and Russia*, § 416, cited above, where the Court found a violation in respect of a four-day delay; and *Rusu v. Austria*, no. 34082/02, § 43, 2 October 2008 in respect of a ten-day delay).

229. As regards the manner of communicating the reasons for the arrest, Article 5 § 2 does not require the reasons to be given in writing to the detained person or otherwise in a particular form (see *Kane v. Cyprus* (dec.), no. 33655/06, 13 September 2011, and *X. v. Germany*, no. 8098/77, Commission decision of 13 December 1978, DR 16, p. 111). Further, the reasons may be provided or become apparent in the course of post-arrest interrogations or questioning (see *Kerr*, cited above*; Murray v. the United Kingdom*, 28 October 1994, § 77, Series A no. 300-A; and *Fox, Campbell and Hartley*, § 41, cited above).

230. It should also be noted that when a person is arrested with a view to extradition, the information given may be even less complete (see *Kaboulov v. Ukraine*, no. 41015/04, §§ 143-144, 19 November 2009, with further references; *Ryabikin v. Russia* (dec.), no. 8320/04, 10 April 2007; and *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, DR 38,

p. 230). A similar approach has been taken in deportation cases (see, for example, *Kane*, cited above).

(b) Application to the present case

231. In the present case on 11 June 2010 the applicant, along with the other protesters, was taken to the ERU headquarters and kept there for identification purposes. His detention continued on the basis of deportation and detention orders issued on the same day which remained in force until 20 August 2010. New orders were then issued on the latter date, changing the grounds for the applicant's detention.

232. In view of the above, the Court considers that the applicant's complaint under this provision is twofold.

233. First of all, the Court has to examine whether the applicant was informed of the reasons for his detention on 11 June 2010. In this respect, the Court notes that the parties differ as to the exact date when the applicant found out about the reasons for his detention. On the one hand, the applicant claimed that he had not been informed orally of the grounds for his arrest and detention until 14 June 2010, that is, after more than seventy-two hours. He also stated in that connection that he had not received any information in writing. According to the Government, on the other hand, the applicant had been informed orally on 11 June 2010, once his identity had been checked, of the grounds for his arrest and detention as well as the fact that he was facing imminent deportation. They also claimed that in any event, these grounds must have become apparent to him during the identification procedure. As to the written reasons, they stated that attempts had also been made to serve the applicant with the relevant letter.

234. The Court observes that upon his transfer to the ERU headquarters the applicant, along with the rest of the protesters, underwent an identification procedure which was aimed at ascertaining whether any of them were staying in Cyprus unlawfully. The Court has no reason to doubt, in the circumstances, that the applicant was informed at the time that he had been arrested on the ground of unlawful stay or that he at least understood, bearing in mind the nature of the identification process, that the reason for his arrest and detention related to his immigration status. In this connection, the Court notes that the applicant filed a Rule 39 request, along with a number of other protesters, the very next day, seeking the suspension of their deportation. A reading of this request indicates that they were all aware of the fact that they were detained for the purpose of deportation.

235. The foregoing considerations are sufficient to enable the Court to conclude that the requirements of Article 5 § 2 of the Convention were complied with.

236. There has accordingly been no violation of this provision as regards the first part of the applicant's complaint.

237. The second issue under this provision concerns the notification of the applicant of the new grounds for his detention on 20 August 2010. However, having regard to its findings under Article 5 § 1 of the Convention pertaining to the applicant's detention on this new basis (see paragraphs 211-216 above), the Court considers that it is not necessary to examine this part of the case under Article 5 § 2 as well.

VI. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

238. Lastly, the applicant complained of a violation of Article 4 of Protocol No. 4 in that the authorities were going to deport him and others collectively without having carried out an individual assessment and examination of his case. This provision provides as follows:

> "Collective expulsion of aliens is prohibited."

A. Admissibility

239. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

240. The applicant, relying on the *Čonka* judgment (cited above), submitted that he had been the subject of a collective expulsion operation. In his view, the intention of the authorities had been to deal with a group of individuals, namely Syrian Kurds, collectively. This had been evident from all the circumstances of the case. The relevant meetings that had been held by the authorities concerned the handling of the situation of Syrian Kurdish failed asylum-seekers. The Minister of the Interior had given instructions to proceed with the deportation of Syrian Kurdish failed asylum-seekers with the exception of those who were Ajanib or Mahtoumeen. The police had been instructed to use discreet methods of arrest and execute the deportation orders starting with the leaders of the protest. As a result, the police had carried out an operation on 11 June 2010 against the whole group of protesters, including women and children. According to the Government only those whose asylum applications had still been pending were released. The rest had been kept in detention pending deportation. However, in

reality, the asylum procedure had not been completed for the applicant as well as a number of other protesters whom the Government had intended to deport. If it had not been for the application of Rule 39 by the Court they would all have been deported. In fact, some of the protesters had been released by the authorities following the application of Rule 39 and had had their deportation orders annulled. The applicant also noted that the authorities had issued deportation orders against stateless Syrian Kurds and that some of the asylum-seekers concerned had had their asylum applications dismissed purely on procedural grounds without having benefited from an examination of the merits of their claim.

241. The applicant further pointed out that everyone had been arrested at the same time and had been informed orally of the same thing, namely, that they would be deported. The letters prepared by the authorities had been couched in identical terms and had therefore just been a formality. The same could be said for a number of the letters sent, requesting the individuals concerned to make arrangements to depart from Cyprus, as they had been issued just before the operation was carried out or just after and, in one case, even after the person in question had been sent back to Syria.

242. Consequently, it could not be said in the circumstances that an individual examination of each case had taken place. The applicant submitted therefore that all the elements indicated that the authorities had carried out a collective expulsion operation in violation of Article 4 of Protocol No. 4.

(b) The Government

243. The Government submitted that the authorities had carried out a detailed individual examination of the immigration status of all the protesters in order to ascertain whether or not they were staying in the Republic unlawfully. Letters proposing detention and deportation had been issued on the same day and separate deportation and detention orders had then been issued against each person. Although the instructions given by the Minister of the Interior to the authorities had been that the deportation of Kurdish failed asylum-seekers from Syria should go ahead in the normal way, these instructions could not have been enforced without the issuing of deportation and detention orders. The latter had been issued on the ground of unlawful stay and not on the basis of the aforementioned instructions. The authorities had already been searching for a number of people who were among the protesters and had been staying in Cyprus unlawfully. Some of them had already been asked to leave the country following the rejection of their asylum applications.

244. The authorities would have therefore proceeded in any event to deport these individuals once traced, even if the Minister had not given the relevant instructions. The Government therefore maintained that it had acted in compliance with Article 4 of Protocol No. 4.

2. The Court's assessment

(a) General principles

245. According to the well-established case-law of the Commission and the Court, collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure of the competent authority compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien in the group (see, for example, *Hirsi Jamaa and Others v. Italy*, [GC], no. 27765/09, §§ 166-167, ECHR 2012; *Čonka*, cited above; § 59, *Ghulami v. France* (dec), no. 45302/05, 7 April 2009; *Sultani v. France*, no. 45223/05, § 81, ECHR 2007-IV (extracts); *Davydov v. Estonia* (dec), no. 16387/03, 31 May 2005; *Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999; *A. and Others v. the Netherlands*, no. 14209/88, Commission decision of 16 December 1988; *O. and Others v. Luxembourg*, no. 7757/77, Commission decision of 3 March 1978; *K.G. v. the F.R.G.*, no. 7704/76, Commission decision of 1 March 1977; and *Henning Becker* v. *Denmark*, no. 7011/75, Commission decision of 3 October 1975). It can be derived from this case-law that the purpose of Article 4 of Protocol No. 4 is to prevent States from removing certain aliens without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure taken by the relevant authority (see *Hirsi*, cited above, §177).

246. The fact, however, that a number of aliens are subject to similar decisions does not in itself lead to the conclusion that there is a collective expulsion if each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis (see the judgments in *Hirsi*, § 184 and *Sultani*, § 81, both cited above; the Court's decisions in *Ghulami* and *Andric*, both cited above; and the Commission's decisions in *Tahiri v. Sweden*, no. 25129/94, decision of 11 January 1995 and *B. and others v. the Netherlands*, no. 14457/88, decision of 16 December 1988).

247. Moreover, there will be no violation of Article 4 of Protocol No. 4 if the lack of an expulsion decision made on an individual basis is the consequence of an applicant's own culpable conduct (see *Berisha and Haljiti v. "the former Yugoslav Republic of Macedonia",* no. 18670/03, decision of 16 June 2005, where the applicants had pursued a joint asylum procedure and thus received a single common decision, and *Dritsas v. Italy* (dec), no. 2344/02, 1 February 2011, where the applicants had refused to show their identity papers to the police and thus the latter had been unable to draw up expulsion orders in the applicants' names).

248. The Court observes that, to date, it has found a violation of Article 4 of Protocol No. 4 in only two cases. First, in *Čonka,* which concerned the deportation of Slovakian nationals of Roma origin from

Belgium to Slovakia, the Court found a breach because the procedure followed by the authorities did not enable it to eliminate all doubt that the expulsion might have been collective. This view was taken on the grounds that the applicants' arrest and consequent expulsion was ordered for the first time in a decision of 29 September 1999 on a legal basis unrelated to the requests for asylum, and in view of the large number of people of the same origin who had suffered the same fate as the applicants. The Court added that the doubt was reinforced by a series of factors:

> "... firstly, prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation ...; secondly, all the aliens concerned had been required to attend the police station at the same time; thirdly, the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; fourthly, it was very difficult for the aliens to contact a lawyer; lastly, the asylum procedure had not been completed."

249. In these circumstances, the Court concluded that the procedure followed by the Belgian authorities had not afforded sufficient guarantees ensuring that the personal circumstances of each of those concerned had been genuinely and individually taken into account (§ 63).

250. The Court considered that the measures taken on 29 September 1999 had to be seen in isolation from the earlier decisions regarding the asylum procedure in which the applicants' individual circumstances had been examined and which, according to the minority view, provided sufficient justification for the expulsion (see the separate opinions of Judge Velaers and Jungwiert joined by Judge Kūris).

251. The recent case of *Hirsi* (cited above, §§ 166-186) concerned the return of migrants, intercepted on the high seas by Italian naval vessels, to Libya, which was the country of their departure. The Court came without difficulty to the conclusion that there had been a clear violation of Article 4 of Protocol No. 4. It first ruled on the complicated issue of the extraterritorial applicability of Article 4 of Protocol No. 4 which arose in that case. Once it had found that this provision was applicable, the violation was self-evident, as the transfer of the applicants to Libya had been carried out without any form of examination of each applicant's individual situation. It was not disputed that the applicants had not undergone any identification procedure by the Italian authorities, who restricted themselves to embarking all the intercepted migrants onto military ships and disembarking them on Libyan soil. Moreover, the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. In the Court's view this was sufficient to rule out the existence of sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination (§§ 185-186).

(b) Application of the above principles

252. In the instant case, the Court notes that an identification procedure in respect of the 149 Syrian Kurd protesters was carried out on 11 June 2010 at the ERU headquarters. Upon arrival at the headquarters registration took place and the status of each person was then examined using computers which had been specially installed the day before. According to the Government, this procedure revealed that seventy-six adults, along with their thirty children, were staying in the Republic unlawfully after having had their asylum applications rejected or their files closed. In this connection, the Court observes that it is clear from the information before it that their asylum applications had been dealt with on an individual basis over a period of more than five years. For those in respect of which the asylum procedure had been completed, the asylum applications had either been dismissed after an examination of their personal circumstances and any evidence they had provided or the files closed for failure to attend interviews. Those who had appealed to the Reviewing Authority had had their appeals individually examined and dismissed. Separate letters had been sent out by the asylum authorities to the individuals concerned, informing them of the relevant decisions.

253. Deportation and detention orders had already been issued in respect of some of the persons concerned. Orders against the remainder were issued on 11 June 2010. The authorities had carried out a background check with regard to each person before issuing the orders and separate deportation and detention orders were issued in respect of each person. Individual letters were also prepared by the Civil Registry and Migration Department informing those detained of the authorities' decision to detain and deport them.

254. It is clear from the above that all those concerned did have an individual examination of their personal circumstances. As a result of this examination some of the persons arrested were allowed to return home as their immigration status was found to be in order and thus their presence on Cypriot territory was lawful. In these circumstances, the fact that all the persons concerned were taken together to the ERU headquarters and that the authorities decided to deport them in groups did not render their deportation a collective measure within the meaning attributed to that term by the Court's case-law. Similarly, the fact that the deportation orders and the corresponding letters were couched in formulaic and, therefore, identical terms and did not specifically refer to the earlier decisions regarding the asylum procedure is not itself indicative of a collective expulsion. What is important is that every case was looked at individually and decided on its own particular facts (see *Andric*, cited above). Although not expressly stated in the deportation orders and letters, the decision to deport was based on the conclusion that the person concerned was an illegal immigrant following the rejection of his or her asylum claim or the closure of the asylum file.

Although a mistake was made in relation to the status of some of the persons concerned, including that of the applicant (see paragraphs 58 and 134 above) this, while unfortunate, cannot be taken as showing that there was a collective expulsion.

255. In view of the foregoing, the Court is not persuaded that the measure taken by the authorities reveals the appearance of a collective expulsion within the meaning Article 4 of Protocol No. 4. There has therefore not been a violation of this provision.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

256. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

257. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

258. The Government contested this claim in so far as it concerned Articles 2 and 3 of the Convention as the applicant had not been deported. They also considered that the claim was excessive.

259. Having regard to the nature of the violations found in the present case and the relevant case-law, the Court, ruling on an equitable basis as required under Article 41, awards the amount claimed by the applicant under this head in full.

B. Costs and expenses

260. The applicant also claimed EUR 1,700 plus VAT for costs and expenses incurred before the Court, less the sum granted as legal aid by the Council of Europe. In this respect he submitted that this was the amount agreed upon with his representative and it represented the sum normally awarded for costs by the Supreme Court in successful recourse proceedings.

261. The Government contested the applicant's claim and maintained that it was excessive.

262. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant has failed to provide any supporting documents – such as itemised bills or invoices – substantiating

his claim (Rule 60 §§ 1 and 2 of the Rules of Court). The Court accordingly makes no award under this head.

C. Default interest

263. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 13 taken together with Articles 2 and 3, Article 5 §§ 1, 2 and 4 of the Convention and Article 4 of Protocol No. 4 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 13 of the Convention taken together with Articles 2 and 3;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* that there has been no violation of Article 5 § 2 of the Convention in so far as the applicant's arrest on 11 June 2010 and his ensuing detention on the basis of the deportation and detention orders issued on that date are concerned;

6. *Holds* that no separate issue arises under Article 5 § 2 of the Convention in so far as applicant's detention from 20 August 2010 until 3 May 2011 is concerned;

7. *Holds* that there has been no violation of Article 4 of Protocol No. 4 to the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President